STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago	:	
	:	**03-0239**
Verified Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company (SBC Illinois) pursuant to Section 252(b) of the Telecommunications Act of 1996.	:	

ADMINISTRATIVE LAW JUDGES' PROPOSED ARBITRATION DECISION

By the Commission:

I. JURISDICTIONAL STATEMENT

Section 252(b) of the Telecommunications Act of 1996, 47 U.S.C. § 251, *et seq.* ("1996 Act" or "TA 96") addresses the procedures for arbitration between incumbent local exchange carriers ("ILECs") and other telecommunications carriers requesting interconnection, competitive local exchange carriers ("CLECs"). Section 252(b) prescribes the duties of the petitioning party, provides the non-petitioning party an opportunity to respond and sets out time limits. Section 252(b)(4) provides that the state commission shall limit its consideration to the issues set forth in the petition and in the response to the petition and shall resolve each issue by imposing appropriate conditions on the parties as required to implement Section 252(c) - Standards for Arbitration. Section 252(d) sets out pricing standards for interconnection and network element charges, transport and termination of traffic and wholesale prices.

Under Section 252(c), a state commission shall apply the following standards for arbitration:

> (1) ensure that such resolution and conditions meet the requirements of Section 252, including the regulations prescribed pursuant to Section 251;
>
> (2) establish any rates for interconnection, services or network elements according to subsection (d); and
>
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

II. PROCEDURAL BACKGROUND

This proceeding was initiated by a Petition for Arbitration ("Petition") filed with the Commission on April 11, 2003 by AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago ("AT&T"), pursuant to Subsection 252(b) of TA96 and 83 Ill. Adm. Code 761, to resolve certain disputed issues with Illinois Bell Telephone Company (SBC Illinois) ("SBC"). SBC filed its Response to AT&T's Petition on May 5, 2003 ("Response").

Pursuant to notice given in accordance with the law and rules and regulations of the Commission, pre-trial hearings were held on April 24, 2003, and June 12, 2003 before duly authorized Administrative Law Judges ("ALJs") of the Commission at its offices in Chicago, Illinois. Evidentiary hearings were held June 16-18, 2003, in Chicago, Illinois. At the hearing, AT&T, SBC and Staff of the Commission appeared and were represented by counsel. The parties waived cross-examination on the majority of issues presented for arbitration. At the conclusion of the hearing the matter was marked "Heard and Taken."

Initial and Reply Briefs were filed by AT&T, SBC and Staff. An ALJs' Proposed Arbitration Decision was served on all parties on July 24, 2003.

III. ISSUES FOR RESOLUTION

A. General Terms and Conditions ("GTC") Issues

GTC Issue 1a

What change of law language is appropriate?

Should the change of law provision apply at the effective date of the agreement or from February 19, 2003?

GTC SBC Issue 1

Should the parties' interconnection agreement, when it is approved by this Commission (the "Agreement Approval Date"), reflect (i) order(s) and regulations, if any, that the FCC promulgates before the Agreement Approval Date in its Triennial Review proceeding, along with the decision of the United States Court of Appeals for the D.C. Circuit in United States Telecom Association, et al. v. FCC, No. 00-1012 ("USTA"); and (ii) the decision, if any, that the United States District Court for the Northern District of Illinois renders before the Agreement Approval Date in Case No. 02-C-6002, SBC's pending challenge to this Commission's 801 Order (the"801 Case")?

AT&T's Position

AT&T proposed "change in law" provisions (Sections 1.30, 1.31 and 132 of the Interconnection Agreement ("ICA")) that generally allow the parties to amend the ICA when a new "change in applicable law" occurs that has a material effect on the ICA, as previously conformed to the various orders and rules of the Federal Communications Commission ("FCC"), the Commission, and applicable federal and Illinois statutes. Under AT&T's proposed language, the parties must first reach agreement that a change in applicable law has actually occurred that has a material effect on the ICA. The parties can then negotiate new or replacement provisions for the agreed upon-material terms.

AT&T stated that once the parties have made a determination, either by agreement or through the dispute resolution process, that a change in applicable law has occurred that materially affects the ICA, the parties could then negotiate the terms and conditions of the amendment used to implement such change in applicable law. Under AT&T's proposed language, any disagreements regarding how the changes in applicable law should be reflected in the ICA would also be resolved through the dispute resolution process set forth in Section 1.9 of the GTC. AT&T stated that the parties have reached agreement on the dispute resolution provisions in Section 1.9, thus all disputes between the parties should be processed in accordance with these provisions without the need for specialized provisions for specific disputes.

AT&T proposed that the proper effective date for the change in law provision is when the ICA actually becomes effective by an order issued by the Commission. SBC's proposed effective date of February 19, 2003 allows either party to argue that any FCC or ICC order or court decision issued, or law enacted, after that date constitutes a change in applicable law even though the ICA will not have been in effect. This position is unreasonable because the parties have continued to negotiate the provisions of the ICA beyond February 19, 2003, up to the date the Arbitration Petition was filed (April 1, 2003), and continued to negotiate provisions throughout the duration of the pending Arbitration (as evidenced by settlement of a number of issues during the course of this proceeding). Therefore, since the parties have drafted the ICA to comport with applicable statutes and orders of the ICC and FCC up through the date the Arbitration Petition was filed with the Commission, and will continue to do so, a change in applicable law should arise only after the effective date of the ICA or, at the very earliest, after June 18, 2003, the date the record was marked "Heard and Taken" in this Arbitration.

As a compromise, AT&T proposed specific language in Section 1.3.0 to the effect that any order and regulations, if any, promulgated by the FCC in connection with the 2003 Triennial Review proceeding, the decision in United States Telecom Assn. v. FCC, or the final federal court decision in SBC's appeal of the Commission's Order in Docket 01-0614 may be considered changes of law under the ICA, even if the 2003 Triennial Review Order is issued prior to the effective date of the new ICA. This approach would address the primary concern raised by Staff and SBC (i.e., the primary potential sources

of a change in law) while avoiding unnecessary reference to an arbitrary date for change of law purposes.

SBC's Position

In its Response to AT&T's Petition for Arbitration, SBC explained why this Agreement should reflect the law as it exists on the date it is approved and goes into effect. SBC incorporates that explanation by reference here.

SBC also stated, however, that an acceptable alternative would be for the Commission instead to resolve GT&C Issue 1 in favor of SBC. That way, significant legal developments that have occurred since February 19, 2003 – even though they will not be reflected in the Agreement when it is approved and goes into effect – can be reflected in the Agreement later via the change of law provisions.

Staff has since recommended that the Commission "adopt SBC's proposed date of February 19, 2003 as the baseline date for the change in law provisions" (i.e., resolve GT&C Issue 1.a in favor of SBC), and that the Commission not adopt SBC's alternative proposal to require the Agreement to reflect current law on the date it is approved (i.e., resolve Issue SBC-1 against SBC).

SBC alleges that the critically important point is that either GT&C Issue 1 or Issue SBC-1 must be resolved in favor of SBC. Otherwise, the parties (and the Commission) would be in the position of having an interconnection agreement that is never brought into conformity with legal developments that occurred between February 19, 2003, and the Effective Date of the Agreement. SBC is content for the Commission to avoid that outcome by accepting Staff's recommendations on both GT&C 1.a and SBC-1.

Commission Analysis and Conclusion

These issues deal with the appropriate change of law under the terms of this ICA. SBC has taken the position that the effective date for this Agreement should be February 19, 2003. AT&T asserts that the effective date of this Agreement should be June 18, 2003 when the record was marked "Heard and Taken" or in the alternative that the appropriate date for resolution of change of law should be the date that the Commission approves this Agreement. The change of law provision permits either party to demand that the Agreement be amended, after it is approved to conform to changes in rules, regulations, statutes, judicial decisions and Commission orders that constitute the legal framework for this agreement. Courts have recognized that not all changes in law can be taken into account during an arbitration process and that it will be necessary from time to time to change the law in order to comply with changes in law.

AT&T notes that the parties continued to negotiate after February 19, 2003 and after the date that the Petition was filed with the Commission. To further support its

position, a points out that a number of other issues were settled after the February 19, 2003 date.

Staff agrees with SBC that the February 19, 2003 date should apply. Staff contends that this is the only proposal presented that insures that no party is forced to waive its abilities and rights to incorporate any changes in law. It would include any laws that became effective after the time of the interconnection agreement and related arbitration issues were developed by the parties, but prior to the effective date of said agreement.

Both parties agree that an interconnection agreement must contain a change of law provision. By not allowing either party to take into account any future changes would be equivalent to forcing a party to waive its legal rights in the future. It is necessary to have a change of law provision. We agree with SBC and Staff that the February 19, 2003 date should be the effective date for change of law for this Agreement.

Therefore, we adopt the language of SBC for Section 1.3.0 to resolve General Terms and Condition Issue 1(a).

SBC 1 was raised by SBC in its Response to the Petition. This issue proposed an alternative resolution for General Terms and Condition Issue 1(a). Given that the Commission ruled in favor of SBC's proposal for General Terms and Condition 1(a) it is not necessary for this issue to be addressed.

GTC Issue 1.b

Should either party be obligated to renegotiate a change in law that is not applicable and materially effecting this agreement?

AT&T's Position

As to Issue GTC 1b, AT&T stated that a party should have the obligation to negotiate only those changes in applicable law that the parties agree apply to and govern this ICA. Each party must have the right to independently evaluate any notice from the other party related to a possible change in applicable law. If the party receiving a change of law notice believes that no change in applicable law that materially affects the ICA has arisen, the other party should not have the right to force a negotiation for a change to the ICA without first going through the dispute resolution process set forth in Section 1.9 of the GTC to resolve whether a change of law materially affecting the ICA has occurred. Thus, AT&T rejected SBC's proposal that if either party believes a change in applicable law has occurred, without regard to any materiality standard and without agreement between the parties that such a change has occurred, the other party has the obligation to negotiate a revision to the ICA.

SBC's Position

AT&T proposes to add language to the change of law provision that would serve only to provoke unnecessary disputes for the Commission to resolve and to unnecessarily prolong the process of amending the Agreement to conform with changes of law. While AT&T may be correct, in theory, that the Agreement should be amended only to conform with material changes of law that affect material provisions in the Agreement, all that would be accomplished by adding a materiality requirement to the change of law provision would be to give the party resisting the change an excuse to initiate a dispute over whether the change is or is not "material." The sensible approach, according to SBC, is to recognize that in instances where there clearly has been no material change (or no change affecting a material provision of the Agreement), neither party will insist on renegotiation.

AT&T's separate proposal for a two-stage dispute resolution process – one to determine whether there has been an applicable change of law and another to determine how the Agreement should be amended to reflect that change – is cumbersome and impractical, and is transparently intended only to introduce delay into the change of law process. If either party demands renegotiation in light of an asserted change of law, the other party is free to contend that the asserted change does not warrant an amendment to the Agreement, but that party should not be permitted to leverage that contention into a protracted delay of the renegotiation and change of law process.

Staff's Position

Staff took no position on this issue.

Commission Analysis and Conclusion

This issue is a question of whether or not a party is obligated to renegotiate a change of law that is not applicable and materially affecting this agreement. SBC feels that AT&T's language would serve only to provoke unnecessary disputes before the Commission and would lead to more disputes than agreements concerning the obligation to renegotiate. Specifically, SBC has a problem with the term "material" as used by AT&T in its proposed language.

AT&T argues that "material" is used routinely in agreements and shouldn't be rejected just because they did not provide a definition for the term. It asserts that the "elasticity" of the term makes it ideal for such agreements. AT&T maintains that SBC's language would require too long of a waiting period in order to get the issue resolved.

After reviewing both sets of terms we feel that SBC's language is appropriate. We agree with SBC that AT&T's language has the potential to lead to more disputes, because of the possibility for multiple arguments. One argument concerning the materiality and once that is resolved, an argument concerning the impact of the change

in law. We adopt SBC's language to resolve the General Terms and Condition Issue No. 1(b).

GTC Issue 1.d

Should there be a final and non-reviewable standard for dispute resolutions related to change in law?

AT&T's Position

With regard to Issue GTC 1d, AT&T stated that once the parties have executed the ICA, they should be entitled to rely on the status of the law as reflected in the ICA until a final and nonreviewable change in applicable law has occurred. A party should not be required to negotiate whether a regulatory order of court decision constitutes a change in applicable law that has a material impact on the ICA, or to negotiate a consequent amendment to the ICA, until the regulatory order or court decision becomes final and nonreviewable. Otherwise, a reversal of the order or decision at the next level of review may require yet another round of negotiations and amendments to the ICA. For the sake of certainty in operation during the term of the ICA and to conserve resources that might be squandered in negotiating and implementing provisions that may be subject to further revision as a result of reversal or modification of a prior court decision or administrative order, a party should not be entitled to invoke the change in law provision of the ICA based on a regulatory order or court decision until that order or decision is final and non-reviewable.

SBC's Position

This Agreement is based on the law as it was when the parties negotiated it (and the Commission arbitrated it), and when there is a change in the law on which the Agreement was based, the party that the change favors is entitled to demand that the Agreement be amended to reflect the change. Accordingly, the parties should be permitted to invoke their change of law rights once the change of law event is "legally binding" – that is, once the judicial decision or Commission Order (for example) is in effect and is no longer subject to a possible stay. AT&T's proposal, that a party that does not like a change of law should be allowed to delay the process of amending the Agreement until the change of law event is "final and nonreviewable", leads to absurd results, according to SBC, because it would require the parties to continue to operate under old laws and old rules long after, sometimes years after, those laws and rules change.

Staff's Position

AT&T's proposal to allow deferral of the change in law requirements until such change becomes final and nonreviewable is contrary to a prior Commission ruling and would effectively force SBC to give up its right to incorporate otherwise effective changes in law into the interconnection agreement. Therefore, Staff recommends the

Commission adopt SBC's proposed language tying the change in law requirements to "legally binding" changes in law.

Commission Analysis and Conclusion

The Agreement between AT&T and SBC was negotiated under the current laws at the time of the agreement. The question to be answered in this issue is: when should a change of law be applicable to this Agreement? Is it when the case is originally issued by the FCC, Federal Court or State Commission? SBC argues that there should not be a delay in the process of amending the agreement until the change of law event is final and non-reviewable. AT&T opines that there should be no negotiations concerning a change of law until the change of law event is final and non-reviewable.

Staff agrees with SBC on this issue. As they point out from SBC's brief, the review of many of these decisions would outlast the length of the decision itself. According to Staff, if AT&T's language is adopted, it would in effect impose a stay on the implementation of any new law, rule or decision.

Based on the above, we agree with SBC and Staff on this issue. Any of the appeals or challenges to laws, rules and decisions may take years to resolve. It could outlast the terms of this ICA. Therefore, we adopt the language as proposed by SBC to resolve General Terms and Condition Issue No. 1(d).

GTC Issue 2a

AT&T Issue: Is it appropriate to cap the damages paid to a Party at the price of services not rendered?

SBC Issue: Is it appropriate to replace a commercially reasonable capped indemnification exposure with non-capped damages when such unlimited damages were not factored into SBC's cost studies underlying the unbundled network elements ("UNEs") and services provided under this agreement?

GTC Issue 2c

Should SBC's liability to AT&T exceed commercially reasonable damages available under this agreement by also including remedies beyond those allowed by applicable law by allowing more than one full recovery on a claim?

AT&T's Position

Under GTC Issue 2a, AT&T and SBC agreed that there should be a general limitation on liability under the ICA. AT&T and SBC also agreed that an exception is made for indemnification obligations expressly provided for in the ICA. However, the parties disagreed on whether there should be other exceptions to that general rule. AT&T proposed three other exceptions to the liability "cap" that are disputed by SBC: (i)

obligations created by the financial incentive or remedy provisions of ICC or FCC ordered service quality plans; (ii) bill credit remedies and damages in connection with failure to provide adequate carrier-to-carrier service quality or to meet the carrier-to-carrier service quality standards as set forth in Article 32 to the ICA; and (iii) obligations otherwise expressly provided in specific appendices or attachments.

AT&T stated that SBC cannot reasonably object to the first two exceptions. AT&T noted that the first two exceptions address payments under a performance measurement remedy plan, such as the plan SBC is required to offer under the Commission's Oder in Docket 01-0662, and payments or credits under carrier-to-carrier wholesale service quality rules that the Commission is developing in Docket 01-0539 (Code Part 731) pursuant to the General Assembly's mandate in 220 ILCS 5/13-712(g). By objecting to either of the first two exceptions, SBC would be taking the position that if the payments SBC would owe AT&T under the terms of SBC's performance remedy plan or under the carrier-to-carrier wholesale service quality rules exceed the amount AT&T has paid or would have paid to SBC for the service in question, then SBC does not have to pay AT&T the full amount that would be otherwise required by the performance measurement plan and/or Code Part 731. AT&T stated that SBC cannot reasonably object to AT&T's third proposed exception because SBC presumably will have agreed to any such obligations set forth in specific appendices or attachments.

With regard to GTC Issue 2c, AT&T stated that it does not seek to recover more than the damages allowed by law, as suggested by SBC. Further, any recovery to which AT&T is entitled will be decided after a full hearing of the facts either by this Commission, the FCC, a court, or another tribunal (e.g., an arbitrator), that will evaluate AT&T's claim against any defenses offered by SBC. To the extent AT&T has been partially compensated through recovery under a performance remedy plan, this information can be introduced as evidence by SBC to apply against a damage award in favor of AT&T. AT&T argued that SBC'S position seeks to artificially restrict AT&T's remedies by setting a limit below what a trier of fact might independently and impartially impose. To limit AT&T's potential recovery in this manner creates an economic incentive for SBC not to perform up to the standards established by the FCC, the ICC and this ICA.

In response to SBC's contention that under AT&T's proposed language for Sections 1.7.1.2 and 1.7.2.1, SBC could be exposed to damages in excess of amounts taken into account by SBC in its cost studies when its current UNE rates were approved by the Commission, AT&T stated that, considering that the exceptions to the liability cap in question are payments under SBC's Commission- and/or FCC-approved performance remedy plan(s), under Code Part 731 carrier-to-carrier wholesale quality rules, or under other provisions of specific attachments or appendices of the ICA presumably negotiated by SBC, the claim that SBC's current UNE rates do not reflect such costs is not a valid argument. AT&T pointed out that SBC's argument, if accepted, would transcend this ICA arbitration and provide SBC a basis for refusing to provide payments or credits otherwise due to CLECs under SBC's performance remedy plan(s)

and the Code Part 731 service quality rules, which would be contrary to the Commission's intent in approving those plans and rules, and to public policy.

AT&T noted that Staff witness Omoniyi recommended adoption of AT&T's proposed language for Sections 1.7.1.2 and 1.7.2.1 of the ICA for this issue, based largely on the same reasoning articulated by AT&T.

SBC's Position

The parties' only disagreement is whether the limitation of liability on which they have agreed will or will not be subject to an exception for "obligations under the financial incentive or remedy provisions of any service quality plan required by the FCC or the ICC," as AT&T proposes. It should not be, particularly in light of SBC's acceptance (in its reply testimony) of an exception for payments required pursuant to the performance measures provisions in the Agreement. The additional exception proposed by AT&T is vague, unnecessary, and – to this point, at least – unexplained. The Commission should, SBC avers, direct the parties to include in their Agreement the limitation of liability provision that the Commission ordered when it arbitrated virtually the same issue last year in Docket 01-0623. SBC does not know whether Staff will support or oppose that proposal. In its testimony, Staff opposed the limitation of liability language that SBC initially proposed, but Staff's position was inconsistent with the Commission's decision in Docket 01-0623, and SBC's acceptance of the language the Commission approved in that arbitration moots some of the concerns that drove Staff's position.

Staff's Position

GTC Issue 2 presents three sub-issues identified in the heading of this section regarding the assessment of damages between the parties in terms of what constitutes reasonable damages. With respect to Issue GTC Issue 2A, Staff recommends that the Commission accept AT&T proposed exclusions to the limitation of liability set forth in Section 1.7.1.2 of the interconnection agreement (hereinafter "ICA"). With respect to GTC Issue 2A, consequential damages, Staff also recommends that the Commission accept AT&T's position on the issue taking into account the facts that the issue is similar to the limitation of liability issue of Section 1.7.1.2 of the ICA

Commission Analysis and Conclusion

This issue deals with assessment of damages between the parties in terms of what constitutes reasonable damages. AT&T proposes language that puts a limitation on liability in circumstances when appropriate but does not agree to any limitations to protect the party from failure to perform under the terms of this agreement. AT&T contends that liability should not apply in four circumstances:

1. Indemnification obligation expressly set forth in the agreement;
2. Obligations created by the financial incentive or remedy provisions of ICC or FCC ordered service quality plans;

3. Bill credit remedies and damages in connection with failure to provide adequate carrier-to-carrier service quality or to meet the carrier-to-carrier service quality standards as set forth in Article 32 to the Agreement; or
4. Obligations otherwise expressly provided in specific appendices or attachments.

AT&T is proposing an additional exception; that there should be no liability cap in the case of obligations under the financial incentive or remedy provisions of any service quality plan required by the FCC or the ICC.

SBC does not have a problem with exceptions 1 and 4 of AT&T's original proposal, but they do not agree with the exceptions 2 and 3. SBC proposes three types of relief:

1. Cap damages via indemnification;
2. Performance measures and penalties; and
3. Specific performance via dispute resolution/arbitration

This proposal is not acceptable to AT&T.

Staff feels that AT&T's proposal is more reasonable and agrees with AT&T concerning this issue. In some instances Staff feels that the provisions should be taken a little bit further.

After reviewing the arguments of both parties we agree with AT&T's proposal concerning issue 2(a).

Issue 2(c) deals with whether either party would be liable for any indirect incidental, consequential, reliance or special damages suffered by either party for these specific causes of damages. SBC is alleging that AT&T's proposed language would allow it to obtain more damages than it should be entitled. SBC raises additional concerns about the possibility of AT&T recovering more than the full recovery of each claim and the contention that its current price for resale, UNEs and interconnection do not account for recovery.

Staff recommends that the language proposed by AT&T should be accepted. They feel the two sections that address the issue of consequential damages are Section 1.7.1.2 for the limitations and liabilities and Section 1.7.3 for mutual obligation to indemnify each party. Based on the party's position, Staff feels that the recognition that consequential damages is acceptable to both parties.

Therefore issue 2(a) and issue 2(c) should both be the language proposed by AT&T and should read as follows:

> Section 1.7.1.2 – Except for 1) indemnity obligations expressly set forth herein, 2) obligations under the financial incentive or remedy provisions of

> any service quality plan required by the FCC or the ICC, 3) bear credit remedies and damages in connection with failure to provide adequate carrier-to-carrier service quality or to meet the carrier-to-carrier service quality standards, or ("performance measurements") as set forth in Article 32 to this Agreement, or 4) obligation otherwise expressly provided in specific appendices or attachments, each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement, including any negligent act or inadvertent omission, whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act, shall not exceed in total the amount SBC or AT&T has charged or would have charged to the other Party for the affected Interconnection, Retail Services, Network Elements, functions, facilities, products and service(s) that were not performed or were improperly performed. "Loss" is defined as any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees).

Section 1.7.2.1 is agreed upon by the parties and shall be incorporated into this Agreement.

GTC Issue 4

AT&T Issue: Is AT&T entitled to purchase out of the tariff and/or incorporate various individual rates, terms and/or conditions that are more favorable in tariff filings in to the parties' ICA through the amendment process?

SBC Issue: When AT&T orders out of a tariff, should AT&T be bound by the terms and conditions of the tariff, or may it pick and choose terms and conditions from the ICA for such tariff offerings?

AT&T's Position

AT&T agreed that Staff witness Dr. Zolnierek's recommendation should be adopted for the resolution of this issue. Dr. Zolnierek endorsed the adoption of AT&T's proposed language in Section 1.30.2, provided that adoption of rates, terms and conditions available to other carriers be implemented through an amendment to the ICA by which AT&T would be bound by those tariff terms and conditions that are material, applicable and "legitimately related" to the tariffed services and rates AT&T elects to purchase and incorporate into the ICA. Dr. Zolnierek also opined that AT&T's proposed language permitting AT&T to automatically order products or services under SBC's tariff even in instances where there are specific rates, terms and conditions in the ICA for the service should not be adopted. He recommended that any such tariff rates, terms and conditions for the service or a product would have to be incorporated into the ICA via an amendment. Finally, Dr. Zolnierek recommended adoption of SBC's language which

would not permit AT&T to purchase products or services from SBC's tariffs when they were already included in the ICA, unless AT&T incorporated the tariff terms and all legitimately related rates, terms and conditions into the ICA.

SBC's Position

The Commission should approve the language for GT&C sections 1.1.1 and 1.30.2 that flow from the recommendations of Staff witness Zolnierek and that Staff has stated it supports. It appears that AT&T also supports this result. If it becomes necessary in light of the position AT&T takes in its Initial Brief, SBC will provide a more detailed statement of its position in its reply brief.

Staff's Position

Staff recommends that the Commission order language in the agreement that permits AT&T to amend the interconnection agreement to incorporate products and services that SBC makes available through tariff or interconnection agreements to other parties in Illinois. Staff recommends the Commission order the following language for Article 1, Sections 1.1.1 and 1.30.2:

> 1.1.1 This Agreement sets forth the terms, conditions and prices under which SBC-ILLINOIS agrees to provide (a) services for resale (hereinafter referred to as Resale services), (b) Unbundled Network Elements, or combinations of such Network Elements as set forth in Article 9 (Combinations), (c) Ancillary Functions, and (d) Interconnection to AT&T. This Agreement also sets forth the terms and conditions for the interconnection of AT&T's network to SBC-Illinois' network and reciprocal compensation for the transport and termination of telecommunications.
>
> 1.30.2 Except as provided in Section 1.30.4, below, the Parties agree that the rates, terms and conditions of this Agreement will not be superseded by the rates, terms and conditions of any tariff SBC-Illinois may file, absent Commission order to the contrary. The Parties agree that AT&T is not precluded from ordering products and services available under any effective SBC-ILLINOIS tariff or any tariff that SBC-ILLINOIS may file in the future, provided that AT&T satisfies all conditions contained in such tariff and provided that the products and services are not already available under this Agreement. If AT&T chooses to order products or services under an SBC-Illinois tariff, it shall be bound by all applicable terms and conditions of the tariff and shall not seek to apply terms and conditions of this agreement to the items it orders from the tariff. AT&T is not precluded from amending the Agreement to incorporate by reference individual and independent rates, terms, and conditions available to other carriers through agreement or tariff, even when such products or services are already available under this Agreement, provided such incorporation by

reference must include material terms and conditions that are applicable and legitimately related to the requested products or services.

The underlined portion of Section 1.30.4 is also the subject of GTC Issue 5. Depending on the way GTC Issue 5 is resolved, Staff asserts that section 1.30.2 either will or will not need to say "Except as provided in Section 1.30.4, below."

Commission Analysis & Conclusion

The parties differ in the overall question of this issue, but seem to agree as to the language and resolution to this issue. AT&T sees this issue as whether or not it should be entitled to purchase out of the tariff and/or incorporate individual rates, terms and/or conditions that are more favorable in tariff filings into the party's ICA through the amendment process. SBC sees the issue as, when AT&T orders out of the tariff, should AT&T be bound by the terms and conditions of the tariff, or may it pick and choose terms and conditions from the ICA for such tariff offerings?

Both parties, though, seem to agree, as do we, that Staff witness Zolnierek's recommendations should be adopted. AT&T, in its Reply Brief, argues that the only change that should be incorporated is the language that Dr. Zolnierek included in his testimony but was not included in Staff's Initial Brief. This would include adding a paragraph to the second sentence: (in which case AT&T may incorporate such products and services including legitimately related rates, terms and conditions by amendment into this Agreement).

Therefore, we will adopt the language as proposed by Dr. Zolnierek with the minor changes from Dr. Zolnierek's testimony and requested by AT&T. We find that AT&T should not be permitted AT&T to purchase products or services from SBC's tariffs when they were already included in the ICA, unless AT&T incorporated the tariff terms and all legitimately related rates, terms and conditions into the ICA.

Accordingly, the language should read as follows:

Section 1.1.1 – This Agreement sets forth the terms, conditions and prices under which SBC agrees to provide (a) services for resale (herein after referred to as resale services), (b) Un-bundled Network Elements, or a combination of such network elements as set forth in Article 9 (Combinations), (c) ancillary functions, and (d) Interconnection to AT&T. This Agreement also sets forth the terms and conditions for the interconnection of AT&T's network to SBC's network and reciprocal compensation for the transport and termination of telecommunications.

Section 1.30.2 – Except as provided in Section 1.30.4 below, the Parties agree that the rates, terms and conditions of this Agreement will not be superceded by the rates, terms and conditions of any tariff SBC may file, absent Commission order to the contrary. The Parties agree that AT&T is

> not precluded from ordering products and services available under any effective SBC tariff or any tariff that SBC may file in the future provided that AT&T satisfies all conditions contained in such tariff and provided that the products and services are not already available under this Agreement. (In which case AT&T may incorporate such products and services including legitimately related rates, terms and conditions by amendment into this Agreement). If AT&T chooses to order products or services under an SBC Illinois tariff, it is bound by all applicable terms and conditions of the tariff and shall not seek to apply terms and conditions of this Agreement to the items it orders from the tariff. AT&T is not precluded from amending the agreement to incorporate by reference individual and independent rates, terms and conditions available to other carriers through Agreement or tariff, even when such products or services are already available under this Agreement, provided such incorporation by reference must include material terms and conditions that applicable and legitimately related to the requested product or services.

GTC Issue 5a

Should the TELRIC rates in the Pricing Schedule be automatically updated when the rates change based upon ICC or FCC proceedings affecting wholesale prices, including tariff revisions, or should an amendment be required to incorporate such rate changes?

GTC Issue 5b

When amendments are required for price changes and/or changes in related terms, what procedures should be followed?

AT&T's Position

With regard to GTC Issue 5a, AT&T agreed with, and accepted, the statement of SBC witness Watkins that there should be no delay in giving effect to changes in TELRIC prices for purposes of the ICA, but that such changes should be memorialized in an amendment to the ICA or to the pricing schedule in the ICA. AT&T's concern was that any changes in TELRIC prices should go into effect immediately without the delay of first having to negotiate and implement a formal amendment to the ICA. SBC witness Watkins' position adequately addressed the concerns of both SBC and AT&T, and should be adopted. AT&T noted that Staff witness Hanson concurred in this result.

As to GTC Issue 5b, because AT&T agreed that an amendment to the ICA or the pricing schedule should be implemented to document changes in TELRIC prices, and although such an amendment should not delay the implementation of the new prices, any changes to material terms and conditions can be incorporated in the same amendment. Under AT&T's proposed language, if the parties are unable to agree as to what terms and conditions should be incorporated into the amendment within 30 days

after commencement of negotiation of the amendment, or if the parties cease such negotiations for ten consecutive days, then either party may seek resolution of the amendment through the dispute resolution provisions in Section 1.9 of the ICA.

SBC's Position

SBC maintains that all changes to the prices the parties charge either other pursuant to the Agreement should be memorialized in an amendment to the interconnection agreement or to the pricing schedule in the Agreement. According to SBC, this will ensure that the Agreement always reflects the terms, conditions and prices on which the parties are doing business. Moreover, it creates an audit trail, so that if a disagreement arises concerning past billings, the parties can readily reconstruct (by consulting the contract amendments) what prices were in effect at what times. Accordingly, SBC asserts that the Commission should accept Staff's recommendation to adopt SBC's language on this issue.

Staff's Position

Staff recommends that rate changes be effective on the date set forth in the Commission order approving the rate, and not upon Commission approval of the resulting written amendment to the tariff. In addition, Staff asserts that the interconnection agreement should be amended to reflect the changed rates.

In its Reply Brief, Staff indicated that it continued believe that in the case of non-asterisked rates, the rates ordered by the Commission should go into effect on their effective date, and should be reflected in the Agreement by reference to the tariff. Staff modified its position, however, with respect to its proposal to require SBC to file a compliance tariff within 30 days of any final order modifying a rate. Staff now maintains that it is not necessary to require SBC to file tariffs based on the language in an interconnection agreement since interconnection agreements may be different than a general tariff available to all parties.

Commission Analysis and Conclusion

Although the parties seem to agree on parts of this issue, differences remain in the proposed language of each party. All agree that changes to prices resulting from a Commission order should be effective in accordance with the date specified in the order and that such pricing changes should also be documented by an appropriate amendment to the ICA.

Staff, in its Reply Brief has withdrawn its proposal to require SBC to file a compliance tariff within thirty days of any final order modifying a rate. Hence, there is no dispute regarding this proposal.

We note that SBC has not explained why the asterisked rates are not subject to change as a result of a Commission order. Absent an explanation for why certain rates are not subject to Commission orders, that language shall not be included in the ICA.

Although not addressed by Staff and SBC, we see no harm in specifying that disputes are to be resolved pursuant to the dispute resolution procedures outlined in the ICA, as proposed by AT&T. Finally references to Docket 02-0864, which has been closed by the Commission, have been removed.

Accordingly, the following language shall be included in Section 1.30.4 of the ICA:

> The rates set forth in the Pricing Schedule to this Agreement are subject to change based upon the outcome of Illinois Commerce Commission proceedings affecting wholesale prices which are given general applicability by the Commerce Commission, including carrier-specific dockets that are given general applicability, where the outcome produces rates different than the rates set forth in the Pricing Schedule. Absent a stay of such an outcome, the affected rate(s) shall be modified consistent with the outcome via written amendment to the Agreement and/or its Pricing Schedule, as appropriate, within thirty (30) days after receipt of written notice by one Party from the other Party. Where such rate differences are accompanied by or are the result of changes to terms and conditions that are legitimately related to the item(s) associated with the affected rates, then the Parties shall include in their amendment conforming modifications to such terms and conditions. If the Parties disagree as to the appropriate terms and conditions requiring modification due to a price change requested pursuant to this Section, either Party may seek resolution of the dispute in accordance with the provisions of Section 1.9 of this Article. The modified rates and any associated modified terms and conditions shall take effect upon the effective date set forth in the Commission order that approves the rate. If the order approving the rate is silent as to the effective date, then the rate would become effective upon the approval of the amendment by the Commission or within sixty (60) days after receipt of the written notice described above, whichever is sooner, unless otherwise agreed to by the parties. Nothing in this paragraph is intended to limit either Party's right to obtain modification of any rates in this Pricing Schedule or any associated terms and conditions in accordance with other terms of this Agreement, including but not limited to the Agreement's "Change in Law; Reservation of Rights" provision Section 3.0.

GTC Issue 7

Should CLECs be responsible for the cost associated with changing their records in SBC's systems when CLECs enter into a merger, assignment, transition, etc. agreement with another CLEC?

AT&T's Position

AT&T objected to SBC's proposed additional language for Section 1.47.1 of the ICA, "CLEC is responsible for costs of implementing any changes to its Operating Company Number ("OCN")/ Access Customer Name Abbreviation ("ACNA") whether or not it involves a merger consolidation, assignment or transfer of assets." AT&T argued that such costs are normal costs of doing business that SBC should absorb as the service provider. AT&T agreed with Staff witness Hanson that adopting SBC's proposed language would lead to SBC over-recovering its costs, because it should be less costly to process hundreds of service orders or records changes at one time than to process orders one at a time. AT&T further agreed with Staff witness Hanson's proposal that the parties be required to utilize the Commission's bona-fide request ("BFR") process (established in Commission Docket 01-0614) should there be a need to revise a large number of records at one time due to a merger, acquisition or similar transaction, in order to ensure adequate scrutiny of SBC's proposed cost recovery while enabling SBC to recover its costs. In short, AT&T accepted Staff witness Hanson's recommendation on this issue.

SBC's Position

ACNAs and OCNs, which are assigned by industry agencies such as Telcordia and NECA, appear on each End User account and/or circuit. These codes are used in all ILECs' directory databases, network databases, and billing systems to identify, inventory, and appropriately bill the services provisioned on each service order. Any change to a company code requires service order activity on each and every end user account and circuit in order to update the multitude of systems. Not only are these company codes utilized within an ILEC's systems, but throughout the industry, which allows the industry as a whole to properly bill routed calls (terminating and originating). When a company code change is associated with a transfer of assets it is no different than a CLEC to CLEC migration which requires a service order to be submitted by a "winning" carrier. And like the "winning" carrier, AT&T should be responsible for the associated costs.

Staff's Position

Staff recognizes that SBC will incur costs in the event of a merger or acquisition that would require SBC to change the customer code. According to Staff, however, permitting SBC to recover a service order charge for each record would result in an over recovery for SBC. Thus, Staff recommends that the rate be set through the BFR process provided in SBC's tariff.

Commission Analysis and Conclusion

AT&T disputes that it should be responsible for the costs incurred by SBC to change the OCN/ACNA records, but nevertheless accepts Staff's proposal to determine the costs through the BFR process. The Commission finds that AT&T should be responsible for the costs SBC incurs when changes must be made to the OCN or ACNA resulting from such things as mergers or acquisitions. AT&T is clearly the cost causer in this situation and has not provided a valid reason for shifting those costs to SBC.

The parties also seem to agree that if such an event occurred, the cost incurred by SBC to process the changes as a group would be less than if it was required to process the same number of service orders individually, but that this cost has not yet been determined. Staff proposes that the BFR process be used to determine the costs that SBC incurs. Similar to the previous issue, we find that it is better to have a mechanism in place for handling disputes prior to the dispute arising. Although, the BFR may not be the perfect mechanism for determining these costs, SBC has not proposed an alternative other than to send AT&T a bill which it can then dispute. This is unacceptable and, therefore, the language proposed by Staff is adopted.

B. Interconnection Issues

Interconnection Issue 1

Where SBC elects to subtend another LEC's tandem switch for exchange access and intraLATA toll traffic, may AT&T interconnect indirectly to SBC via such tandem for local traffic?

AT&T's Position

AT&T's proposed language specifies that where SBC has elected to subtend the tandem switch of another ILEC, AT&T should have the choice to route local and intraLATA toll traffic via the other ILEC's tandem switch. AT&T asserts that it may fulfill its obligation under Section 251(a)(1) of TAT96 by using indirect connection. SBC disputed this and its position would require AT&T to establish a point of interconnection ("POI") at each SBC end office, even if there was minimal traffic that would not justify a direct interconnection. According to AT&T, however, TA96 requires SBC to provide interconnection to AT&T at any technically feasible point using any technically feasible method, and the FCC has stated that a new entrant should have the choice to interconnect to the ILEC's network using the method that lowers the new entrant's costs. AT&T proposed indirect connection because it is the most efficient way for AT&T and SBC to exchange small volumes of traffic. Moreover, SBC can only refuse to allow indirect interconnection when significant adverse impacts would result, and SBC has not shown that would occur in this situation. What would happen under SBC's proposal is that AT&T would be forced to subsidize the costs of delivering SBC's originating traffic to the AT&T switch, which is completely contrary to the FCC's intercarrier compensation regime.

Staff witness Dr. Zolnierek agreed with AT&T in principle, but proposed alternative language that is unacceptable for several reasons. Dr. Zolnierek's proposed language incorrectly assumed that AT&T and SBC share a POI for indirect interconnection. Further, Dr. Zolnierek's proposed language only defined AT&T's responsibility for facilities on its side of the POI rather than defining both parties' obligations like AT&T's proposed language does. Accordingly, AT&T stated that while Dr. Zolnierek's basic conclusion should be accepted, his language should be rejected in favor of AT&T's proposed language. AT&T stated that its proposed language better effectuated the principles articulated by Dr. Zolnierek.

SBC's Position

In four rural exchanges in downstate Illinois, AT&T wants to drop off local traffic to SBC at a Verizon tandem located at least 20 miles from the SBC central office. This proposal violates the interconnection requirement of Section 251(c)(2)(B) of the TA96 because it does not provide for interconnection "within" the SBC network. Equally important, AT&T's proposal appears to create legal obligations for Verizon to provide tandem switching capacity and transport facilities for AT&T's benefit. Verizon is not a party to this Agreement and AT&T should not presume to create duties for Verizon. For these reasons, SBC requests that AT&T's proposed language for section 3.2.5.1 be rejected. Staff concurs.

Staff proposes new language for section 3.2.5.2 which makes it clear that AT&T can indirectly interconnect to SBC through the facilities of a third party carrier (such as Verizon), so long as AT&T has the cooperation of the third party carrier. SBC does not object to this language, as long as language is added to the Agreement that makes it clear that the point of interconnection for any such indirect interconnection must be established within SBC's operating territory. SBC has proposed such language in section 4.3.1 (Interconnection Issue 9), and Staff agrees with that language. If it is adopted by the Commission, then Staff's changes to section 3.2.5.2 are acceptable to SBC.

Staff's Position

AT&T should be able to deliver traffic to SBC's network, i.e., to a POI at SBC's network through a third party when AT&T makes appropriate arrangements to do so with the third party carrier. AT&T, however, should bear the same responsibility, financial and physical, on its side of the POI as it would if it were delivering the traffic over AT&T facilities. Therefore, Staff recommends the Commission, reject AT&T's proposed Article 3, Section 3.2.5.1 language, and instead add the following language to the agreed upon language of Article 3, Section 3.2.5.2:

> AT&T may, where it makes arrangements with a third party to do so, provide facilities on its side of the POI using a third party's tandem switch or other facilities. Each party remains responsible for the facilities on its

> side of the POI. In addition, AT&T not only remains responsible for the facilities on its side of the POI, but for ensuring that any facilities provided by a third party on AT&T's side of the POI comply with the provisions of this interconnection agreement.

Commission Analysis & Conclusion

Four of SBC's central offices in downstate Illinois subtend the tandem switch of another ILEC. AT&T proposes to fulfill its Section 251(a)(1) obligations under TA96 by indirectly connecting to those central offices utilizing the tandem switch and other facilities of the third party ILEC. SBC objects to AT&T's proposal, arguing this would violate Section 251(c)(2)(b) of TA96, which it believes requires interconnection at a point within SBC's network, and that it would create obligations for the third party ILEC that it asserts are inappropriate for inclusion in this Agreement.

Staff agrees that AT&T is entitled to deliver traffic to SBC's network through a third party, in this case an ILEC, provided AT&T makes the appropriate and required arrangements with the third party carrier to do so. Staff also asserts a POI must be established in SBC's network so that each party's financial and physical responsibilities, on its side of the POI, are clearly defined. Staff recommended the following alternative language:

> AT&T may, where it makes arrangements with a third party to do so, provide facilities on its side of the POI using a third party's tandem switch or other facilities. Each party remains responsible for the facilities on its side of the POI. In addition, AT&T not only remains responsible for the facilities on its side of the POI, but for ensuring that any facilities provided by a third party on AT&T's side of the POI comply with the provisions of this interconnection agreement.

SBC indicates that it does not object to Staff's proposed language, provided that provision is made elsewhere in the interconnection agreement to clarify that POIs for any such indirect correct interconnection must be established within SBC's serving territory. AT&T also does not object to Staff's proposal, provided the following sentence is added:

> Each Party shall be responsible for the costs of transporting its originating traffic from the POI to the terminating switch of the other Party, including any third party transit charges, and the Parties shall compensate each other for transport and termination of their respective originating traffic in accordance with Article 21 of this Agreement.

It thus appears that the dispute concerning this issue has been narrowed somewhat. We find acceptable AT&T's proposal to establish, or designate, a POI within SBC's territory by utilizing "…the POI that the transiting carrier has with SBC that lies within SBC's territory". Such a POI, which would clearly establish the point of financial

and physical demarcation for exchange of traffic, is consistent with requirements of TA96 and FCC rules. We find it preferable, however, to adopt more specific language to be included in Section 3.2.5.1:

> Where SBC-Illinois' end offices subtend another ILEC's tandem switch for local traffic and/or exchange access, AT&T may, at its discretion, interconnect with SBC-Illinois for local traffic and/or exchange access utilizing the other ILEC's tandem switch or at the SBC-Illinois end office. If AT&T elects interconnection via the third party tandem switch, it shall designate a POI within the operating territory of SBC-Illinois. Each party is responsible for the facilities on its side of any POI(s) established under such conditions. Each party is responsible for ensuring that any facilities provided by a third party on its side of any POI in such an interconnection arrangement comply with the provisions of this interconnection agreement.

Interconnection Issue 2

Does AT&T have the right to use UNEs for the purpose of network interconnection on AT&T's side of the POI?

AT&T's Position

AT&T maintains that as an interconnecting carrier it may choose any method of technically feasible interconnection and that SBC may not restrict AT&T's right to access UNEs for the purpose of network interconnection. Conversely, SBC contends that AT&T may lease facilities for network interconnection from SBC's special access tariff, but AT&T does not have the right to use UNEs for such an interconnection.

AT&T contends that SBC's position not only lacks legal support, but also violates SBC's obligation to provide UNEs under TA96, the FCC's Local Competition Order, and the UNE Remand Order. Moreover, despite the requirements in TA96, SBC proposed to charge AT&T access rates that exceed the economic cost of such interconnection facilities. Additionally, in a recent arbitration, the FCC rejected a position similar to the one asserted here by SBC. Citing FCC precedent, Staff witness Dr. Zolnierek recommended that the Commission adopt AT&T's proposal. AT&T, therefore, recommends that its proposed language be adopted.

SBC's Position

According to SBC, AT&T wants to lease UNE transport facilities from SBC on AT&T's side of the POI. The Commission should reject this language, SBC asserts, because AT&T's request is not appropriate under the FCC's rules. SBC maintains that the FCC recently addressed this issue in its press release dated February 20, 2003, that summarizes its Triennial Review Order. In the press release, the FCC states that its Triennial Review Order redefines dedicated transport to make it clear that it is not available for interconnection between CLEC and ILEC switches. SBC argues that

AT&T is requesting that very thing. Accordingly, any question about SBC's obligation to provide UNE transport for interconnection with AT&T's switch has been resolved in SBC's favor and SBC maintains that the Agreement should reflect this result.

Staff's Position

Staff advises against resolving this issue based on a high level summary of the FCC's intended action with respect to this issue found in the FCC's Triennial Review proceeding press release. Rather, Staff recommends that the Commission decide this issue based on known pre-Triennial Review rules. The Commission should adopt the Article 3, Section 3.2.2 language proposed by AT&T for this issue, which permits AT&T to obtain unbundled dedicated transport to transport its traffic to SBC's network.

Commission Analysis & Conclusion

We conclude that this issue must be resolved with the law in existence prior to the Triennial Review Order. We cannot adopt SBC's proposal because it is based on the FCC's Triennial Review Order press release. As stated in GTC Issue 1 above, if the FCC's Triennial Review Order reaches a different conclusion, that can properly be dealt with through the change in law provision.

Staff and AT&T both argue that AT&T's position is consistent with Pre-Triennial Review law. SBC does not dispute this. We interpret the current FCC rules to allow for the use of the dedicated transport UNE by CLECs to interconnect with ILEC networks.

For the first time in its Reply Brief, SBC suggests that not only is AT&T's language inconsistent with the Triennial Review Order, but that it is also overly broad. SBC makes this statement, but fails to provide language that it believes is clear or consistent with pre-Triennial Review Law. Accordingly, we adopt AT&T's proposed language that allows it to obtain transport facilities from SBC under Article 9 of the ICA.

Interconnection Issue 3

What terms apply to AT&T's intra-building interconnection to SBC-Illinois?

AT&T's Position

AT&T proposed language that recognized its right to use intra-building interconnection, and specified terms and conditions for its use. SBC, in contrast, proposed that intra-building cable interconnection should only be allowed subject to agreement of the parties, which would allow SBC to refuse to provide the interconnection at any time, or to give SBC the opportunity to extract additional payments from AT&T before SBC would agree to the interconnection. AT&T contended that SBC's position is contrary to Section 251(c)(2)(B) of TA96 which provides that AT&T may interconnect to the ILEC at any technically feasible point. According to the FCC, the fact that this type of interconnection exists is feasible. Moreover, the FCC

specifically rejected a proposal similar to SBC's in the recent Virginia Arbitration Decision.

Allowing AT&T to use intra-building interconnection via cable, where feasible, is beneficial to AT&T because it permits AT&T to avoid the purchase of an SBC entrance facility, which is far more costly. AT&T's proposal is thus consistent with a CLEC's right to interconnect to the ILEC's network using the technically feasible method that lowers the new entrant's costs. Additionally, because AT&T's proposed language requires that AT&T would bear the entire cost of providing, installing and maintaining the intra-building interconnection cable, there would be no basis for allowing SBC to charge AT&T for an entrance facility. AT&T's proposed language is consistent with existing law and should be adopted.

SBC's Position

AT&T's proposed language is unnecessary, contrary to law and inconsistent with agreed language in the Agreement. To the extent that AT&T is seeking to interconnect its facilities located in a condominium building shared with SBC, the parties have already agreed to language that permits that. But AT&T's language goes much further. AT&T seeks to dictate how SBC routes cables through its central office, in violation of FCC rules and contrary to agreed language in the Agreement. AT&T also seeks to use coaxial cable without restriction. SBC will agree to AT&T's use of coaxial cable on a case-by-case basis, taking into account technical feasibility, safety and space congestion issues, but AT&T's vague and open-ended language should not be adopted.

Staff's Position

Staff took no position on this issue.

Commission Analysis & Conclusion

Interconnection Issue No. 3 deals with what terms apply to AT&T's intra-building interconnection to SBC. This issue is similar to Issue Collocation 2(b); it deals with interconnection within a premises or intra-building interconnection.

SBC asserts that the language is unnecessary, contrary to law and inconsistent with the agreed language of their Agreement. They feel that AT&T is seeking to interconnect its facilities located in a condominium building and the parties already have agreed to language to permit that. SBC also argues that AT&T seeks to dictate how SBC routes cables through its central office in violation of FCC Rules and contrary to the agreed language in this agreement. According to SBC, AT&T also seeks to use coaxial cable without restrictions. SBC also feels that the language is vague and open-ended and should not be adopted.

AT&T responds to SBC's arguments by emphasizing that it is not seeking the right to implement unreasonable routing of its intra-building cable, but only calling for

cables to be installed on the shortest practical route. AT&T also agrees that it cannot use coaxial cables for interconnections under certain circumstances for technical considerations. It is also willing to bear the costs associated with placing intra-building cable connections in the buildings. AT&T would agree to bear the entire cost of providing, installing and maintaining the intra-building cables. This would limit the access by SBC, unless SBC agreed to a maintenance and compensation agreement.

Under limited circumstances, we do not feel that the proposal of AT&T is unreasonable. We have some concerns about SBC's control over its network, but as pointed out by AT&T, in all the time that the two companies have interacted, there has been no attempt to damage any equipment by either company's employees. Accordingly, we adopt the following language:

> 3.3.3 Intra-building Interconnection. Where both parties have a presence within a central office building (e.g., condominium arrangement, point of presence or POP hotel) or between two adjacent central office buildings utilizing an intra-building cable.
>
> The following terms and conditions will apply to intra-building connections:
>
> **3.3.3.1** – AT&T may designate the use of either a fiber optic cable or coax (i.e., DS-3 ABAM) cable;
>
> **3.3.3.2** – such cable will be installed via the shortest practical route between the SBC Illinois and AT&T's equipment;
>
> **3.3.3.3** – AT&T will be responsible for the reasonably incurred installation and maintenance costs for such cable;
>
> **3.3.3.4** – AT&T will have sole use of the cable unless the parties mutually agree to joint use and an allocation of financial responsibility and apportionment of the facility capacity of the cable; and
>
> **3.3.3.5** – No other charges shall apply to AT&T's use of the facilities over such arrangement.

Interconnection Issue 5

AT&T Issue: Does AT&T have the right to establish a POI at any technically feasible point on SBC's network and does each originating party have the obligation to transport its traffic to the POI or should the agreement provide certain exemptions from the Act that relieve SBC from its obligation to interconnect at any technically feasible point and to transport its traffic from its originating switch to the POI?

SBC Issue: Are there reasonable limitations on AT&T's right to interconnection with SBC free of any charge? For instance, is AT&T entitled to receive expensive interconnection, FX interconnection, and interconnection outside SBC's franchised territory free of charge as discussed further in issues 6-9.

AT&T's Position

AT&T asserted that AT&T, not SBC, has the right to select the POIs to SBC's network and that the originating carrier is financially responsible for delivering its traffic to its POI and to compensate the terminating party for the transport and termination it provides. In contrast, SBC asserted that AT&T should locate a POI and an end office switch within each SBC local calling area, or compensate SBC as if AT&T had done so. AT&T stated that SBC's proposal would require AT&T to adapt its network design to SBC's network design, resulting in AT&T losing the benefits of its efficient network architecture and incurring substantially higher network costs. Moreover, SBC's proposal would shift to AT&T the transport costs that the ILEC is required to bear under TA96.

AT&T contends that the FCC has consistently applied TA96 to prevent ILECs from increasing a CLEC's cost by requiring multiple POIs. Additionally, this Commission has specifically rejected SBC's prior attempt to place limitations and restrictions on CLECs' right to select POIs and to opt for as few as one POI per LATA. Furthermore, this Commission has rejected the assessment of "extra" charges to CLECs for the transport of SBC-originated traffic to a POI located outside the SBC local calling area. Numerous state commissions have rejected attempts like SBC's to require multiple points of interconnection and to assess extra charges to CLECs. SBC's proposal is inconsistent with these widely-held principles, and would shift a substantial amount of SBC's traffic transport costs to AT&T, prohibit AT&T from charging SBC for certain other transport costs, and increase AT&T's transport obligations beyond what AT&T is required to bear under the law. SBC's proposal would unlawfully charge AT&T for picking up SBC-originated traffic on SBC's side of the POI. SBC's proposal would also require AT&T to be financially responsible for delivering its traffic into SBC end-offices, but would not put a similar burden on SBC, thereby creating an inequitable and unlawful imbalance of responsibilities.

Staff witness Dr. Zolnierek agreed with AT&T's position, but did not recommend adopting AT&T's proposed language for this issue. However, AT&T stated that Dr. Zolnierek's proposed language implements the interconnection and compensation principles that AT&T advocated. Thus, Dr. Zolnierek's resolution of this issue should be adopted.

SBC's Position

The disputed language in section 4.3.1 is fully addressed in Interconnection Issue 9, below. SBC adopts and incorporates by reference all of its arguments for Interconnection 9. In a nutshell, section 4.3.1 properly reflects the law by requiring that

a point of interconnection be established "within" SBC's network, pursuant to the requirement of Section 251(c)(2)(B) of the Federal Telecommunications Act of 1996. Staff agrees that SBC's proposed language for section 4.3.1 should be adopted.

Staff's Position

Staff recommends that the Commission reject SBC's proposal to assess additional transport charges on AT&T for delivering traffic to POIs that AT&T selects which are beyond SBC's local calling boundaries. Staff further recommends that AT&T be permitted to indirectly interconnect with SBC through third parties, but that AT&T be subject to the same rates, terms, and conditions for indirect interconnection that it is subject to for direct interconnection. Staff recommends the Commission adopt SBC's language for Article 4, Sections 4.3.1 and 4.3.2 but reject SBC's proposed language for Article 4, Sections 4.3.2.1, 4.3.3, 4.3.3.1, and 4.3.3.2.

Commission Analysis & Conclusion

This discussion applies to Interconnection Issues 5 and 9.

We agree with AT&T that much of SBC's proposed language for Section 4.3. would violate AT&T's rights under current law and FCC rules to select POIs between the respective networks, and also would violate the corresponding principle that each carrier properly bears the financial responsibility of delivering its originating traffic to the point of interconnection. We find that SBC's proposed language effectively and improperly negates AT&T's rights under TA96 to designate a single POI in each LATA by requiring AT&T to pay SBC for transporting traffic as if AT&T were required to establish multiple POIs in each of SBC's local calling areas.

We find that SBC's proposed Sections 4.3.1 and 4.3.2, modified to delete SBC's proposed exceptions or limitations, properly reflects AT&T's rights and obligations to establish POIs and is consistent with current FCC rules concerning POIs. We direct that the following language be adopted for Sections 4.3.1 and 4.3.2 of the ICA. We address the positions of AT&T and the other parties concerning the remainder of SBC's proposed language for Section 4.3 in detail in our discussion of Interconnection Issues 6 through 8.

> 4.3.1 Each Party shall provision and maintain its own one (1)-way trunks to deliver calls originating on its own network and routed to the other Party's network. Each Party will be responsible (including financially) for providing all of the facilities and engineering on its respective side of each point of interconnection ("POI") except as set forth in Section 4.3.2 below. AT&T must establish one or more POI(s) within the operating territory in the LATA where SBC operates as an incumbent LEC, and such POI(s) must be used by AT&T to originate AT&T Local/IntraLATA traffic in such LATA. SBC shall deliver its originating traffic to AT&T at AT&T's switch or such other mutually agreeable POI(s) and such switch or POI(s),

whichever is applicable, must be within the LATA and within SBC-Illinois' operating territory where the traffic originates.

4.3.2 In a one (1) way trunking architecture, each Party originating Local/IntraLATA traffic ("Originating Party") shall compensate the Party terminating such traffic ("Terminating Party") for any transport that is used to carry such Originating Party's Local/IntraLATA traffic between the POI and the Terminating Party's switch serving the terminating end user or its designated Point of Presence ("POP").

Interconnection Issue 6

In one way trunking architectures, does SBC have an obligation to compensate AT&T for any transport used by AT&T to terminate Local/IntraLATA traffic originated by SBC if AT&T's POI and/or switch is outside the local calling area and the LATA where the call originates?

Interconnection Issue 7

When AT&T has requested a POI located outside the local calling area of SBC's end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for Local/IntraLATA traffic originated by SBC?

AT&T's Position

AT&T proposed no language under this issue, but SBC did. SBC's language would require that, for SBC-originated traffic, AT&T's terminating switch and the POI, or point of presence ("POP"), would be required to be within the same LATA and within SBC's local calling area where the call originates. Under SBC's proposal, if these conditions are not met, AT&T would be required to bear the costs to transport the SBC-originated traffic between the POI and AT&T's switch.

AT&T contended that SBC's proposals are contrary to Sections 251(b)(5) and 252(d)(2) of TA96 and FCC rules, 47 C.F.R. §§ 51.701 and 51.703, which require SBC to pay reciprocal compensation to AT&T for the transport of SBC's originating traffic irrespective of the locations of the POI between SBC and AT&T or of AT&T's terminating switch. SBC's proposal enables it to escape its obligation to pay the transport portion of reciprocal compensation to AT&T in the circumstances defined by SBC's language for Section 4.3.2.1.

Staff witness Dr. Zolnierek recommended that the Commission reject SBC's proposed language. He noted that SBC previously made the same arguments in Docket 01-0614, but the Commission unambiguously rejected SBC's position. He also noted that SBC failed to demonstrate that AT&T had elected "expensive interconnection" as defined by the FCC, failed to show there is a less expensive method

of interconnecting SBC's existing network with AT&T's existing network, and in fact proposed no alternatives for interconnection. Additionally, Dr. Zolnierek pointed out that the Commission previously determined that "expensive interconnection" does not include increased transport costs, which SBC expressly included when defining "expensive interconnection." Finally, Dr. Zolnierek concluded that AT&T's proposed language, limiting compensation between its POP in a LATA and its switch outside the LATA, was irrelevant under the FCC rules. AT&T agreed that Dr. Zolnierek's recommendation on this issue should be adopted.

For Interconnection Issue 7, AT&T proposed no language. SBC, however, proposed language under this issue for Sections 4.33, 4.3.3.1, and 4.3.3.2 of the ICA. SBC's proposal requires that where AT&T has requested an "expensive form of interconnection" resulting in a POI located outside the calling area of SBC's end user originating the call, AT&T would be financially responsible for the transport outside the SBC local calling area of local/intraLATA traffic and FX traffic originated by SBC, less 15 miles. AT&T stated that SBC's proposal should be rejected because the originating carrier is financially responsible for delivering its traffic to the POI, irrespective of where the POI is located within the LATA. AT&T contended that SBC's proposal violates the principle that the originating carrier has a financial obligation to deliver its traffic to the POI, and would have a devastating economic effect on AT&T.

For the reasons set forth under Interconnection Issue 6, Staff witness Dr. Zolnierek recommended that SBC's proposed language be rejected. And, as in Interconnection Issue 6, he stated that AT&T's proposed language was irrelevant. AT&T found Dr. Zolnierek's recommendation acceptable and stated that it should be adopted.

SBC's Position

Issues 6 and 7 present the same question and should be resolved together. The question presented is whether AT&T can require SBC to route traffic past a nearby AT&T switch to an AT&T switch located an additional 25 miles away without bearing any of the costs for the additional transport it thereby imposes on SBC. SBC should be compensated in this situation for three reasons. First, this is "expensive interconnection" under the principle set down by the FCC in its Local Competition Order. SBC demonstrates that it incurs up to an additional 12 million dollars in one-time capital costs to accommodate AT&T's routing instructions. By any standard, this increased cost – which does not even include ongoing expenses – is "expensive."

Second, AT&T has at least four switch locations in the Chicago LATA – Chicago, Lisle, Oak Brook and Rolling Meadows. It could, at the very least, instruct SBC to route traffic to the nearest AT&T switch location. AT&T does not do so. Instead, it instructs SBC to route traffic closest to the terminating location on AT&T's network, a practice that saves AT&T a great deal of transport which it would otherwise have to provide itself. The point is that SBC is not transporting calls those great distances because AT&T has only a single point of interconnection in the LATA. AT&T could just as easily

instruct SBC to hand off the traffic at the closest switch location, but it does not do so. And it will not do so as long as the Commission permits AT&T to get free transport.

Third, SBC's proposal is economically efficient because AT&T will use the appropriate amount of transport from SBC only when it has to pay a cost-based rate for that input. As long as AT&T gets the transport for free, it will have the incentive to use as much free transport as it can – regardless of the actual cost incurred by SBC and regardless of whether the parties could jointly agree upon a solution that resulted in lower overall costs for both parties.

Finally, SBC's proposal is designed to minimize the charges that AT&T would pay. The charge would be a Commission-approved TELRIC rate for interoffice transport and would apply to transport beyond 15 miles. In other words, on a 20 mile route, SBC would charge for only 5 miles – the first 15 miles are always free because transport charges would not apply to truly local calls. Moreover, SBC has recently revised its proposal to clarify that it would not charge for all of the terminating electronics involved in the transport. This further reduces the charge AT&T would have to pay to approximately 25% of the expected charges that AT&T identified in its testimony.

The Commission, the FCC and several courts have addressed the issue of whether ILECs can charge for excess transport in this situation. While the decisions have gone both ways, one thing that is clear is that federal law does not prohibit a commission from permitting an ILEC to impose these charges.

Staff's Position

Staff recommends the Commission reject SBC's proposal to assess additional transport charges on AT&T for delivering traffic to POIs that AT&T selects which are beyond SBC local calling boundaries.

Commission Analysis and Conclusion

A CLEC, such as AT&T, may elect to interconnect with SBC's network using a single POI or using multiple POIs, pursuant to Section 13-801(b)(1) of the Act and also Section 251 of TA96. AT&T has opted to interconnect at multiple POIs in SBC's region.

In the Global NAPS Arbitration, we stated the following:

> Each party here should assume financial responsibility for transport on its side of any POI established for the exchange of telecommunications traffic. Order on Rehearing, Docket 02-0253 at 11.

That Order addressed a situation where the CLEC had a single POI. Docket 01-0614 similarly discussed an arrangement with a single POI, but also makes the following statement upon which Staff relies:

> Until such time as the rules change, however, each party to an interconnection arrangement regardless of the number of POIs involved, shall bear the costs of getting traffic to the arrangement and shall not charge the party on the other side any of the costs. Docket 01-0614 at 106.

Hence, it is clear, for the reasons given in our preceding orders, that SBC cannot charge AT&T for transport on SBC's side of the POI. Equally clear is that SBC's "expensive interconnection" argument fails. See Global NAPS Arbitration, Order on Rehearing, Docket 02-0253 at 11.

We note, however, that our previous decisions did not address the issue raised here by SBC. We have not given CLECs, with more than one POI, free reign to send calls to farther switches.

We agree with Staff that SBC witness Mindell's evidence, concerning the possibility of carriers reducing transport costs of interconnecting their two networks if AT&T altered its routing decisions, has theoretical merit. We also agree with Staff that SBC's proposed language does not reflect Mr. Mindell's proposed solution. SBC's proposal is too broad. Foremost, it is not limited to situations where a closer POI exists, but AT&T has chosen to route its traffic to a farther POI. We are not told, among other things, if AT&T's switches are sometimes farther than 15 miles, simply because of the distance and not AT&T's routing decisions. Staff maintains, and we agree, that SBC's position is unworkable as proposed.

SBC's proposed language results in AT&T bearing costs on SBC's side of the POI in contradiction with our prior Orders and in apparent contradiction with FCC regulations barring an originating LEC carrier from charging another telecommunications carrier for local traffic carried to another LECs system (47 USC 51.703(b)). When considering this in conjunction with the disconnect between SBC's proposed language and SBC's testimony, we must adopt AT&T's position. Accordingly, SBC's language for Sections 4.3.2.1, 4.3.3, 4.3.3.1 and 4.3.3.2 is rejected.

Interconnection Issue 8

When AT&T has requested a POI located outside the local calling area of SBC's end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for FX traffic originated by SBC.

AT&T's Position

AT&T proposed no language under this issue. SBC, however, proposed language under this issue for Sections 4.33, 4.3.3.1, and 4.3.3.2 of the ICA. SBC's proposal requires that where AT&T has requested an "expensive form of interconnection" resulting in a POI located outside the calling area of SBC's end user originating the call, AT&T would be financially responsible for the transport outside the

SBC local calling area of local/intraLATA traffic and FX traffic originated by SBC, less 15 miles. Here, SBC proposed that FX traffic should be subject to a different set of interconnection rules than all other kinds of traffic – effectively stating that FX traffic is exempt from FCC rule 47 C.F.R. § 51.703(b). AT&T stated, however, that no such exemption exists. AT&T stated that, as it showed under Interconnection Issue 5, the originating carrier is responsible for delivering its traffic to the POI and for compensating the terminating carrier for any transport and termination the terminating carrier provides, and that these requirements apply regardless of whether the traffic is FX traffic or any other type of traffic.

Staff witness Dr. Zolnierek recommended that SBC's proposal be rejected, noting that in two recent orders, the Commission prohibited carriers originating FX-like traffic from assessing intercarrier compensation charges for originating the traffic. Moreover, Dr. Zolnierek stated that carriers, including SBC, typically do not treat FX and FX-like traffic like typical toll traffic. SBC's proposal for assessing AT&T transport charges for transport beyond 15 miles would not impose reciprocal treatment but rather would provide asymmetric treatment of only AT&T's traffic. Finally, Dr. Zolnierek recognized that rejecting SBC's language is not discriminatory or unfair, but that it may actually benefit SBC in some circumstances. AT&T agreed with Dr. Zolnierek that SBC's proposed language should be rejected.

SBC's Position

Issue 8 presents an even more compelling case for the Commission than Issues 6 and 7 because it deals with the transport costs for "FX" traffic – not normal local traffic. In an FX arrangement, AT&T separates the "rating" and "routing" of a phone number so that what should have been a toll call (i.e, a call from Aurora to Chicago) appears to the billing systems as a local call (i.e, Aurora to Aurora). SBC gets hit twice: it cannot charge its end user for this call and it must transport the toll call for AT&T all the way to Chicago (35 miles away) for free. Unlike a normal local call that actually originates in Aurora and terminates in Aurora, AT&T bears no transport cost to return the call from the point of switching in Chicago back to Aurora. And unlike the normal local call that originates in Aurora and terminates in Aurora, AT&T cannot argue that the long haul transport is necessitated merely by the fact that its sole point of interconnection is located in Chicago. AT&T has switch locations much closer than Chicago where SBC could hand off the traffic. AT&T wants the call delivered in Chicago because that is the final destination of the call. Why else would it select Chicago as the handoff point, rather than its other switch locations at which it could exchange traffic with SBC that are much closer? As SBC proved, AT&T only occasionally asks SBC to deliver traffic to the closest AT&T switch. In all other cases, AT&T demands that SBC provide free transport to locations 20 or 35 miles away from the point of origination. If AT&T wants SBC to transport FX traffic to remote points on its network that are farther away than other available points of interconnection, AT&T should pay for that service at Commission-approved TELRIC based rates.

SBC fully developed the arguments that support its positions in Interconnection Issues 6 and 7 and will not repeat those arguments here. The main point is that the FX calling in Issue 8 is a unique situation which is singularly unfair and which calls out for immediate redress. The Commission should adopt SBC's language to remedy this problem.

Staff's Position

Staff took no position on this issue.

Commission Analysis and Conclusion

Interconnection 8, similar to Interconnection Issues 6 and 7, concerns SBC's proposal to make AT&T compensate SBC for the additional expense SBC incurs in transporting calls to and from POIs outside SBC's local calling area. Interconnection 8, however, concerns calls where one of the parties provides FX or FX-like service to its customers.

As determined in Intercarrier Compensation Issue 2b, SBC pays neither reciprocal compensation nor access charges for FX or FX-like calls. If SBC were successful on this issue, it would collect transport charges from AT&T for any transport over 15 miles. SBC would also collect from its end-user. Under its proposal, it would also not reimburse AT&T for the costs of terminating the call. We are not told the relative value of these costs. Without being presented with the actual costs involved, the Commission is not prepared to grant SBC's request.

Also unconvincing is SBC's argument that this traffic really is toll traffic masquerading as local traffic. As noted by Staff, the Commission has consistently held that this is local exchange traffic.

It is an incomplete proposal weighted in SBC's favor. In an attempt to appear even-handed, SBC, for the first time in its Initial Brief, proposes that the following language be added for 4.3.3.3:

> The provision for payment of transportation excess of 15 miles for FX traffic shall apply reciprocally to both SBC and AT&T.

We ruled in AT&T's favor on Interconnection Issues 6 and 7 and, therefore, SBC's 4.3.3.3 is unnecessary. SBC proposes the same language for this issue. SBC raises no compelling reason for us to reach a different conclusion on this issue.

Interconnection Issue 9

When AT&T has requested a POI located outside the local calling area of SBC's end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for FX Traffic originated by SBC.

AT&T's Position

AT&T did not submit any testimony on this issue because it viewed this issue as being identical to Interconnection Issue 8. Staff witness Dr. Zolnierek noted that both Section 251(b)(5) of TA96 and Section 18-301(b)(1)(B) of the Act impose on SBC the obligation to interconnect with a CLEC at any technically feasible point within the ILEC's network. Thus, SBC is not currently obligated to interconnect at points outside its ILEC network. Dr. Zolnierek also noted that AT&T's latitude to select POIs that reduce its costs should be limited by a requirement that the POI be at a point within SBC's ILEC network, and that to allow otherwise could require SBC to build facilities in another ILEC's territory in which SBC currently has no facilities. Therefore, Dr. Zolnierek recommended, consistent with his recommendation on Issue 5, that the Commission accept SBC's proposed language for Section 4.3.1, with modifications outlined in his recommendation on Section 5.

AT&T stated, however, that Dr. Zolnierek's recommendation on Issue 9 would completely undo his recommendation for Interconnection Issue 1. If Dr. Zolnierek's recommendation is adopted, AT&T would be unable to indirectly interconnect with SBC as AT&T would otherwise be permitted to do under Staff's recommendation for Interconnection Issue 1. AT&T also stated that contrary to Dr. Zolnierek's concern, SBC would not be required to construct facilities in another ILEC's territory because SBC's interconnection with the transiting carrier would be within SBC's ILEC territory when AT&T indirectly interconnects with SBC.

To resolve the inconsistency between Staff's recommendations on Interconnection Issues 1 and 9, AT&T proposed the following language to be added at the beginning of SBC's proposed language for Section 4.3.1: "Except where AT&T elects to indirectly interconnect with SBC pursuant to Section 3.2.5.1, ..."

SBC's Position

SBC proposes language for section 4.3.1 and 4.3.2 to make it clear that AT&T must establish a point of interconnection "within" SBC's service territory, as required by Section 251(c)(2)(B) of TA96 and Section 13-801(b)(1)(B) of the Act. AT&T objects and argues (as it did in Issue Interconnection 1) that no POI is required when it indirectly interconnects through the facilities of a third party carrier. This is wrong. Every interconnection arrangement requires a POI to establish exactly where the compensation obligations begin and end. Similarly, a POI establishes exactly where a parties network maintenance obligations begin and end. It appears that AT&T would have all those questions decided by the traffic exchange agreements between SBC and

Verizon, rather than accept responsibility to manage these interconnection issues for itself. While SBC has no objection to AT&T's use of a third party carrier's facilities to establish a POI within the SBC service territory, SBC does object to treating SBC/AT&T traffic as if it were SBC/Verizon traffic for purposes of compensation and network maintenance.

Staff concurs with SBC's proposed language. SBC urges the Commission to adopt its proposal for Section 4.3.1 and 4.3.2.

Commission Analysis and Conclusion

See Commission Analysis and Conclusion under Interconnection Issue 5.

Interconnection Issue 10

Should the charges for the use of each Party's SS7 network be reciprocal?

AT&T's Position

This issues involves whether SBC should compensate AT&T for the use of AT&T's Common Channel Signaling network, referred to as the "SS7 network", without which calls cannot be completed into AT&T's network to its end users. AT&T witness Hammond described the functioning of the AT&T SS7 network. He stated that the SS7 network is a digital data network that carries signaling information and interfaces with the voice/data network. When an end user initiates a voice or data call, specific information is required by the originating service provider that will enable the call to be processed. This information is provided by the local service provider at the terminating end of the call.

Specifically, the originating provider sends a message or query to the terminating provider's Signal Transfer Point ("STP") for call set up and routing information, and the terminating party returns an SS7 signal that provides this information to the originating provider. The information will contain the status of the number being called. For example, the signal sent back to the originator of the call may include routing information and may indicate if the terminating line is busy, available or call forwarded. This same signaling occurs whether the call being attempted is a local, toll or long distance call. Mr. Hammond testified that the exchange of signaling information by the parties' signaling networks is required to process any call between service providers. He also explained that the SBC and AT&T SS7 networks are interconnected by what is known as "D-Links", which interconnect the AT&T SS7 network to SBC STP locations.

AT&T leases the D-Links from SBC. Mr. Hammond stated that SBC uses the D-Links and AT&T's signaling services to complete local and toll calls to AT&T. He explained that AT&T's SS7 network provides the necessary signaling functionality for SBC-originated calls to be terminated on the AT&T network; similarly, SBC's network provides the necessary signaling functionality for AT&T-originated calls to be terminated

on the SBC network. Calls cannot be completed by SBC into the AT&T network without utilization of the AT&T SS7 network.

AT&T witness Hammond stated that the current interconnection agreement between AT&T and SBC provides for the exchange of SS7 signals between the parties' networks and the related compensation for the exchange of these messages, stating in Section 4.4.1 that "each party shall charge the other Party equal and reciprocal rates for CCIS signaling at the rate set forth in Item V of the Pricing Schedule."

The current interconnection agreement also addresses compensation to AT&T for SBC's use of the D-Links that AT&T has leased from SBC. Presently, SBC charges AT&T approximately $30,000 per month in Illinois for the lease of D-Links to interconnect the AT&T and SBC SS7 networks. However, SBC uses a portion of the D-Links that AT&T has leased from SBC.

AT&T's position is that because both parties' SS7 networks are used to complete calls between their respective networks, each party should compensate the other for the provision of signaling functionality. In addition, AT&T believes that SBC should compensate or reimburse AT&T for a portion of the costs of leasing the D-Links that connect the parties' SS7 networks, since SBC makes use of the D-Links. AT&T believes that these matters should be addressed in this ICA.

SBC, however, objected to AT&T's language for Section 7.1 of the ICA that would provide for the parties to compensate each other for the use of their SS7 networks. Instead, SBC proposed language for Section 7.1 stating that AT&T may interconnect to SBC's SS7 network via "A-Links". AT&T stated that SBC's proposal that AT&T could connect its switches (end offices) directly to SBC's SS7 network, using A-Links, is unnecessary. Such a connection might be necessary for a CLEC that does not have its own SS7 network, but not for AT&T. AT&T has its own SS7 network, including its own STPs, and each of AT&T's end offices is already connected to AT&T's own SS7 network via an A-Link. Thus, AT&T stated that it does not need to connect its end offices directly to SBC's SS7 network. Rather, AT&T provides its own signaling functionality for calls into its network, including those originated by SBC.

AT&T stated that SBC's position that "AT&T local" did not have an SS7 network "of its own" interconnected to SBC's SS7 network and that the existing interconnection was between SBC and "AT&T Long Distance" via D-Links that had been ordered by "AT&T Long Distance" was a distinction without a difference, because AT&T has only one SS7 network, which is already interconnected to SBC's SS7 network via D-Links. AT&T stated that no type of call – local, toll or long distance – can be completed by SBC into AT&T's network without the use of the signaling functionality provided by AT&T's SS7 network. AT&T stated that SBC's witnesses did not dispute these facts.

In response to SBC's position that if "AT&T local" were to connect its SS7 network to SBC's SS7 network, there nonetheless should be no compensation between the parties for the respective use of each other's SS7 networks, AT&T stated that SBC's

position ignores the fact that the traffic flowing from SBC to AT&T is not in balance with the traffic flowing from AT&T to SBC. AT&T stated that since SS7 signaling is charged for on a per-message basis, each party should be billed and pay the other party for the SS7 messages that the first party sends to the second party's SS7 network (which should approximately correspond to the numbers of calls each party initiates into the other party's network), so that the each party is appropriately compensated for the other party's use of the first party's SS7 network to complete calls.

In addition, in response to SBC's concern that AT&T's tariffed rate for SS7 signaling is considerably higher than SBC's tariffed rate, AT&T stated that it would be willing to agree to reciprocal billing for SS7 signaling using the rates set forth in the Pricing Schedule for each party's billing to the other, or to use a different, negotiated rate for this purpose. AT&T stated that what is important is that the parties bill and compensate each other on a per-message basis for SS7 signaling, due to the imbalance in the originating traffic flows between the two companies. AT&T also stated that the ICA should provide for a proportional sharing of the costs of the D-Links; presently, AT&T uses about 80% of the capacity of the D-Links, and so at this time AT&T would expect SBC to bear about 20% of the cost. AT&T stated that this proportionate cost responsibility would change as the proportionate use of the D-Links by the parties changes over time.

SBC's Position

The question presented is whether the Commission should adopt AT&T's proposal and let each party charge additional (and potentially asymmetrical) rates for SS7 signaling or whether the Commission should adopt SBC's proposal that the parties interconnect their SS7 networks on a peer-to-peer basis without additional compensation. SBC's proposal is superior for several reasons. First, there is no need for the parties to charge one another additional rates for SS7 signaling, as AT&T proposes. There are SS7 costs included in the reciprocal compensation rates that both parties charge one another and each party should be satisfied with that recovery of SS7 costs. Second, it appears that AT&T does not intend to establish local interconnection arrangements but prefers to put local signaling messages over the SS7 connection it established for access signaling. AT&T concedes that the established SS7 interconnection arrangement is an access arrangement. Accordingly, AT&T should not be permitted to apply terms from the interconnection agreement to its tariffed arrangement.

SBC's proposal is that each party pay its own costs of establishing STP-to-STP connections. Thereafter, each party can exchange SS7 signaling messages without the need to track usage and render bills, both of which generate unnecessary internal expenses. Moreover, this proposal eliminates any incentive a carrier may have to gain the regulatory process by seeking out terminating traffic – an issue that has caused endless problems in the ISP arena. Finally, much of the traffic that originates on the SBC network and terminates to AT&T is "FX" traffic, which by Commission order is

exempt from reciprocal compensation. AT&T's proposal would, to some degree, permit it to access the very charges disallowed by that Commission order.

Staff's Position

Staff took no position on this issue.

Commission Analysis and Conclusion

Initially, we note that AT&T has dropped its argument that its access SS7 tariff should apply. Hence, the remaining question is whether or not this SS7 traffic should be subject to symmetrical reciprocal compensation as contained in the Pricing Schedule. Consistent with the FCC's stated policy goals to reduce carriers' reliance on carrier to carrier payments, we adopt a bill and keep regime for SS7 signaling.

We note that AT&T's proposal includes a reduction in its cost for leasing "D" links from SBC for its access SS7 signaling. AT&T bases this proposal on the fact that SBC also sends traffic over the D link. In a footnote in its Initial Brief, SBC makes the following statement regarding the leasing arrangement and the traffic that goes over the D links:

> The same applies for the "D" links for which SBC Illinois bills AT&T approximately $30,000 per month. Those links are purchased from the access tariff and are used for access traffic. If there is incidental local traffic going over those links, SBC Illinois cannot distinguish it and SBC Illinois should not be expected to pro rate the D link charges to distinguish between access traffic and local traffic.

As this makes clear, and AT&T explicitly acknowledges, this leasing arrangement has been in place since prior to AT&T offering local service. This rate is for AT&T's access traffic. There is no evidence that the cost of the lease was increased when AT&T began to use the D-links for local traffic as well.

There is a traffic imbalance between SBC's and AT&T's networks; 80-85% of the traffic currently originates on SBC's network and terminates on AT&T's network. Similar to ISP bound traffic, AT&T would be the net receiver and hence, the benefactor of any reciprocal compensation scheme put in place for SS7 traffic. Our conclusion to impose a bill and keep regime is consistent with the FCC's reciprocal compensation principles of reducing regulatory arbitrage and overall dependence on carrier to carrier compensation.

C. UNE Issues

UNE Issue 1

Should the ICA definition of Network Elements be that from the Illinois Public Utilities Act?

AT&T's Position

It is AT&T's position that "Network Elements" should be defined and used throughout the parties' ICA as that term is defined in Section 13-216 of the Act and should be used interchangeably with the term "Unbundled Network Elements." The terms Network Elements and Unbundled Network Elements are essentially interchangeable because AT&T's rights under Illinois law extend to all bundled and unbundled "network elements" as that term is defined in Section 13-216. Thus, there is no reason to distinguish between network elements and unbundled network elements and to do so is to make a distinction without a difference as far as SBC's unbundling and combining obligations are concerned. SBC's unbundling and obligations contained in this Commission's Orders, including its Orders in Dockets 98-0396 and 01-0614, and the Act, including Section 13-801, apply to all "network elements" as defined by Section 13-216 of the Act and not to some lesser subset of elements, such as the FCC-defined minimum list of network elements an ILEC must provide a CLEC. AT&T is entitled to all "network elements" on any unbundled or bundled basis in accordance with Section 13-801(d) of the Act. The national, minimum list of UNEs defined by the FCC is just a subset of the "network elements" SBC is required to provide on both a bundled and unbundled basis and to combine pursuant to the law of Illinois and the orders of this Commission. Thus, any attempt by SBC to limit its unbundling or combining obligations under the parties' interconnection agreement to only unbundled network elements, no matter how defined, constitutes a clear violation of the Act, the orders of this Commission and AT&T's rights under state law.

SBC's Position

The Commission should adopt SBC's version of section 9.2.1, which defines the term "Network Element" as that term is defined in Section 13-216 of the Act. AT&T's proposal to use the Section 13-216 definition to define both "Network Element" and "Unbundled Network Element" should be rejected. The term "Unbundled Network Element," as used in the Agreement, should be understood to refer only to those Network Elements that ILECs have been ordered to unbundle in accordance with Sections 251(c)(3) and 251(d)(2) of TA96. In addition, AT&T's proposal to include references to "Network Elements" in addition to, or in place, of "Unbundled Network Elements" in sections 9.1.1, 9.1.2, 9.1.3, and 9.2.5.1 of the Agreement should be rejected because such references could be improperly construed to require SBC to provide AT&T with access to Network Elements that have not been unbundled. Such a construction would be inconsistent with the scope of Article 9, as expressed in the

agreed on language of sections 9.1 and 9.3.1, and the requirements of federal and state law.

Commission Analysis and Conclusion

Unbundled network elements ("UNEs") comprise a subset of network elements. UNEs are those network elements that the FCC or this Commission has ordered ILECs to "unbundle" consistent with Section 251(c)(3) of TA96. This position is consistent with Section 13-801 of the Act, TA96 and FCC rules promulgated pursuant to TA96. AT&T argues that network elements and unbundled network elements are terms that should be used interchangeably. The terms "UNEs" and network elements are not completely interchangeable. Section 13-801 itself contains distinctions between these two terms.

SBC's proposed language for Section 9.1.1 would limit its obligations to provide nondiscriminatory access to UNEs under applicable state statutes orders rules and regulations only to the extent these are not inconsistent with federal, orders, rules and regulations. This language is rejected. Section 13-801 of the Act makes quite clear that it imposes upon SBC additional requirements not inconsistent with TA96 and not preempted by FCC orders. These requirements apply to SBC unless and until they are found to violate federal law or regulation. In the event of such finding, any affected state statutes orders rules or regulations would no longer be applicable. Therefore, SBC's proposed language is unnecessary and is rejected.

We emphasize that SBC's obligation to provide AT&T access to unbundled network elements is not confined solely to the set of unbundled network elements defined by the FCC. Under Section 13-801 and consistent with federal rules and regulations SBC is further obligated to provide access to any additional unbundled network elements defined by this Commission. Ultimately, the Commission will determine any disputes concerning these additional unbundled network elements.

Accordingly, Sections 9.1.1, 9.1.2, 9.1.3 and 9.2.1. shall read as follows:

> 9.1.1 SBC Illinois shall provide AT&T nondiscriminatory access to Unbundled Network Elements, upon request, at any technically feasible point on just, reasonable and nondiscriminatory rates, terms and conditions to enable AT&T to provision any telecommunications services within the LATA, including, but not limited to, local exchange and exchange access, in accordance with the federal Telecommunications Act of 1996, applicable FCC orders, rules and regulations and applicable state statutes, orders, rules and regulations.
>
> 9.1.2 SBC Illinois shall provide AT&T Unbundled Network Elements in a manner that allows AT&T to combine those network elements to provide a telecommunications service.
>
> 9.1.3 Certain specific terms and conditions that apply to the Unbundled Network Elements and the Combinations of Network Elements SBC

> Illinois shall provide to AT&T are described herein and in the attached Schedules. Prices for UNEs and combinations are set forth in the attached Pricing Schedule.
>
> 9.2.1 "Network Element" shall mean "a facility or equipment used in the provision of a telecommunications service." "Network Element" shall also include "features, functions, and capabilities that are provided by means of the facility or equipment, including, but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service."

UNE Issue 2

Should the ICA definition of telecommunications service be as stated in the Public Utilities Act, or in the FCC Act?

AT&T's Position

AT&T stated that "telecommunications services" should be defined in the ICA consistent with the definition of "telecommunications service" contained in Section 13-203 of the Act. Section 13-801(a) provides that SBC shall provide AT&T with interconnection, collocation, network elements, and access to operations support systems on just, reasonable, and nondiscriminatory rates, terms, and conditions to enable the provision of any and all existing and new telecommunications services within the LATA, including, but not limited to, local exchange and exchange access. Section 13-801(a) is just one of several provisions of Section 13-801 that grants AT&T the right to utilize bundled and unbundled network elements to provide "telecommunications services." To interpret the definition of "telecommunications service" more narrowly than it is defined by the Act would violate Section 13-801 of the Act and the Commission's Orders in Dockets 98-0396 and 01-0614, would relieve SBC, at least in part, of its statutorily-mandated state law obligations and would deprive AT&T of the benefits to which it is entitled as a matter of Illinois law. While the definition of "telecommunications service" included in the Act may be broader than the definition of "telecommunications service" used in the federal Act, in no way is the Illinois definition inconsistent with the federal definition.

SBC's Position

Consistent with its position in UNE Issues 1, 4, and 7, discussed elsewhere, SBC proposes language for section 9.1.1 stating that "telecommunications service," as used in Article 9, should be defined as set forth in TA96 and, to the extent not inconsistent with the Act, the applicable Illinois statute (i.e., Section 13-203 of the ACT (220 ILCS 5/13-203)). AT&T, on the other hand, proposes language for section 9.1.1. adopting the definition of "telecommunications service" as set forth in Section 13-203 of the Act, without reference to TA96. Under TA96, ILECs can only be required to provide CLECs with access to UNEs for the purpose of providing "telecommunications services." 47

U.S.C. § 251(c)(3). As used in Section 251(c)(3), the term "telecommunications services" is defined in Section 3(46) of the federal Communications Act of 1934. 47 U.S.C. § 153(46). Thus, to the extent that the definition of "telecommunications service" in Section 13-203, when used in the context of SBC's obligation to provide AT&T with access to UNEs under Article 9, would create a contractual obligation to provide UNEs that exceeds the obligation based on the definition of "telecommunications services" in Section 3(46) of the federal Act, such contractual obligation would be inconsistent with Section 251(c)(3) of TA96. To avoid the potential for such inconsistency, the Commission should approve SBC's proposed version of section 9.1.1.

Commission Analysis and Conclusion

SBC opines that the definition for telecommunications service should be defined as set forth in TA96. AT&T's position is that the term telecommunications service should be defined solely by reference to Section 13-203 of the Act.

Staff is in agreement with AT&T that the definition should be taken out of Section 13-203 of the Act adding that this definition has never been held by any orders, rules or regulations to be inconsistent with the federal definition of the term in TA96. Staff does admit that this definition is in fact broader than the Federal definition. Staff asserts, howver, that by using this definition it does not impose on SBC any additional requirements beyond those which SBC is already subject to under state and federal rules and regulations.

SBC argues that by adopting the Illinois definition it does, in fact, impose additional obligations to provide UNEs that exceed the obligations based on the definition of telecommunications service and Section 3(46) of the federal act and such obligations would be inconsistent with Section 251(c)(3) of TA96.

While we do agree that TA96 limits some of the obligations and requirements of SBC we do not feel that the Act's definition of telecommunications service imposes any additional requirements on SBC beyond those to which SBC is already subject to under State and Federal Rules and Regulations. If there are any questions as to what obligations SBC has, they will be decided by this Commission. Therefore, we agree with Staff and AT&T and adopt the State definition of telecommunications service.

The language with respect to this issue should state as follows:

> 9.1.1(con't) – A "telecommunications service" as used in this Agreement, shall be defined as "the provision or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of information, by means of electromagnetic, including light, transmission with or without benefits of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching and delivering of such

information) is to provide such transmission and includes access and interconnection arrangements and services."

UNE Issue 3

Must AT&T utilize UNEs for the provision of local exchange service to end users in order to utilize UNEs for the provision of other services?

AT&T's Position

AT&T contended that Section 13-801(a) requires that SBC provide AT&T nondiscriminatory access to network elements to the maximum extent possible and requires SBC to provide network elements to AT&T "in any manner technically feasible and to the fullest extent possible to implement the maximum development of competitive telecommunications services offerings." As such, SBC cannot impose restrictions on AT&T's use of UNEs that are more stringent than the restrictions imposed by the Act and the rules, regulations and orders of this Commission. According to Sections 13-801(a) and 13-801(d) and this Commission's Order in Docket 01-0614, AT&T is entitled to use network elements to provide all telecommunications services, including exchange access service. AT&T acknowledged that the FCC's Supplemental Order Clarification limits AT&T's use of an unbundled loop-transport network element combination, or EEL, to bypass special access service unless AT&T also provides a "significant amount of local exchange service" over that loop-transport combination. AT&T stated that this Commission has elected to defer the investigation of whether the FCC's local traffic test set forth in its Supplemental Order Clarification in CC Docket No. 96-98, FCC 00-0183 ought to apply in Illinois and, in the interim, has concluded that the criteria contained in the FCC's Supplemental Order Clarification would apply to CLECs using a loop-transport combination, including the "significant amount of local usage" criterion. AT&T, in agreed upon language, has agreed to comply with the restrictions imposed by the Commission on the use of UNEs, including the use of UNEs to provide exchange access. (Section 9.1.2) AT&T stated that SBC's restrictive language is too broad in that it provides that UNEs shall not be used solely for exchange access service -- in all circumstances. SBC's proposed limitations are too broad and violate Section 13-801 of the Act.

SBC's Position

The Commission should approve SBC's version of section 9.1.2, which makes it clear that AT&T may not use combinations of UNEs solely for exchange access. SBC's position is supported by the FCC's Supplemental Order Clarification which imposes usage limitations to prevent CLECs from using UNE loop-transport combinations exclusively to provide exchange access service to other carriers. Staff has proposed alternative language to section 9.1.2 referring to the Supplemental Order Clarification. To be acceptable, Staff's proposed language must be revised to (i) accurately reflect the requirements of the Supplemental Order Clarification and (ii) eliminate any inference

that SBC has an obligation to perform the work of combining network elements that SBC is not required to provided on an unbundled basis.

Staff's Position

AT&T and SBC disagree on language limiting AT&T's ability to use UNEs to provide exchange access service. Staff's recommends that the interconnection agreement language be modified to place certain restrictions on AT&T's use of UNEs to provide exchange access service consistent with FCC's Supplemental Order Clarification.

Commission Analysis and Conclusion

The language proposed by AT&T and SBC Illinois for Section 9.1.2 is identical with the exception of two additions proposed by SBC. AT&T objects to both of these proposed additions.

First, SBC proposes language to clarify that "UNEs shall not be used solely for exchange access service, but may be used as such in conjunction with local exchange service". SBC points to the FCC's Supplemental Order Clarification in support of this proposed language. We agree with AT&T, however, that SBC's proposed language is overly broad, and is not necessary to accomplish SBC's stated objective. Staff's basic approach to this issue, which is to specifically reference the requirements of the FCC's Supplemental Order Clarification, is superior. We note that there is general agreement among the parties that the use of UNEs by AT&T to provide access service should comply with requirements of the FCC's Supplemental Order Clarification.

Staff proposed the following specific language:

> In situations where AT&T is not collocated and does not have self or third party provided transport, AT&T may not use Combinations of network elements to provide exchange access service to a customer unless it provides a "significant amount of local exchange service" to such customer in accordance with the requirements and definitions contained in paragraph 22 of the FCC's Supplemental Order Clarification in CC Docket No. 96-98, FCC 00-0183.

AT&T finds this language acceptable, but SBC objects that it does not accurately reflect requirements of the Supplemental Order Clarification. First, SBC points out that two of the three alternatives contained in Paragraph 22 of the Supplemental Order Clarification involve collocation. Second, where AT&T is collated and does self-provide transport (or purchase transport from third parties), it would be purchasing loops from SBC, which AT&T may use to provision access service with no "local usage" restriction. Both of SBC's points are correct, and Staff's proposal must be modified accordingly.

The second issue separating the parties is SBC's proposed addition that it may impose limitations on AT&T's use of network elements or UNEs provided for by the

1996 Act and FCC rules and regulations (in addition to any limitations applicable under Illinois law and regulation). AT&T urges that only restrictions or limitations provided for under the Illinois PUA and state rules and regulations should be recognized.

We find that SBC's proposed addition is appropriate. Just as SBC Illinois must abide by both state and federal obligations to, for example, provide access to unbundled network elements, AT&T must abide by any applicable limitations on its use of UNEs imposed by both federal and state laws and regulations.

Consistent with our determinations above, we approve the following for inclusion as Section 9.1.2 in the ICA:

> 9.1.2 (con.t) – SBC Illinois shall provide AT&T with combinations of Unbundled Network Elements that it "ordinarily combines" for itself pursuant to Section 9.3 herein. SBC Illinois should not place any restrictions or limitations on AT&T's use of network elements or Unbundled Network Elements or combinations of network elements other than as set forth in this Agreement, and other than those restrictions and limitations provided for or by the Federal Telecommunications Act, the rules and regulations of the Federal Communications Commission, the Illinois Public Utilities Act and applicable State laws, rules, orders and regulations. AT&T may not use combinations of network elements to provide exchange access service to a customer unless it provides a "significant amount of local exchange service" to such customer in accordance with the requirements and definitions contained in Paragraph 22 of the FCC's Supplemental Order Clarification and CC docket no. 96-98, FCC 00-0183.

UNE Issue 4

AT&T Issue: What classes of traffic should be excluded from reciprocal compensation under this Article?

SBC Issue: Should Information Access traffic and Exchange Services for such access be defined as traffic exempted from reciprocal compensation?

AT&T's Position

AT&T stated that SBC's proposal to limit AT&T's use of UNEs to provide services solely to end users is inconsistent with Section 13-801 of the Act and the Commission's Order in Docket 01-0614. AT&T is entitled to use UNEs to provide telecommunications services to itself and its affiliates in addition to being able to use UNEs to provide telecommunications services to end users. Nothing in the FCC rules or Illinois law precludes AT&T from using UNEs and UNE combinations to provide service for itself and its affiliates. In fact, this Commission's Order in Docket 01-0614 expressly rejected the notion that a CLEC could only use UNEs to provide service to end users. To the contrary, the Commission concluded that a CLEC purchasing a network elements

platform from SBC could resell the intraLATA toll portion of its network elements platform to an interexchange carrier to provide toll service. The Commission concluded that this arrangement was consistent with the language of Section 13-801(d)(4) of the Act. (Order dated June 11, 2002, Docket 01-01614, ¶454, p. 139).

SBC's Position

TA96 provides that ILECs must provide UNEs to a requesting telecommunications carrier for the "provision of a telecommunications service." The Act defines "telecommunications service" as the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public." AT&T may, therefore, use UNEs to provide telecommunications service to the public. It may not use UNEs to provide service to itself or to its affiliates.

Staff's Position

Staff took no position on this issue.

Commission Analysis and Conclusion

This issue is whether AT&T may use UNEs to provide service to itself and its affiliates.

SBC asserts that pursuant to TA96, AT&T may only use UNEs to provide telecommunication services to the public (i.e., end users) and not to itself and its affiliates. It further argues that AT&T misinterpreted the Commission decision in Docket 01-0614 rejecting the notion that a CLEC could only use UNEs to provide service to an end user. The Commission did not rule as a general proposition that a CLEC may resell any UNEs or UNE combinations that it purchased from SBC, according to SBC's argument. To the contrary the Commission expressly declined to rule that CLECs may sell EELs (loop-dedicated transport combination) and concluded that at this time CLECs purchase in EELs may not resell them, but may use them to provide service to CLECs end users or pay phone providers, no matter how the EEL was purchased. SBC asserts that there is nothing in our Order in Docket 01-0614 that supports the proposition that AT&T should be allowed to use UNEs to provide telecommunication services to itself or to an affiliate which is not providing inter-exchange service to end users. SBC argues that AT&T would have the ability to resell the intra-LATA toll portion of the network element platform to an IXC for the use by the IXC to provide service to an end user.

AT&T argues that it has the right to provide telecommunications service to itself and its affiliates in addition to being able to use UNEs to provide telecommunications service to end users. It argues that Section 13-801 of the Act and the Commission's Order in Docket 01-0614 gives it this authority. AT&T states that nothing in the FCC's rules or Illinois law precludes AT&T from using UNEs and UNE combinations to provide service to itself and affiliates. AT&T posits that SBC is attempting to limit its use of

UNEs to provide service by arguing that it should apply solely to providing service to end users.

It is under the authority of the TA96 that we have the authority to render a decision for the issues in this arbitration. Pursuant to Section 252(d)(3) of the Federal Communications Act, nothing prohibits this Commission from enforcing other requirements of State law in review of an Agreement, including and requiring compliance with intrastate communication services quality standards or requirements.

Based on this we agree with AT&T that they are entitled to use UNEs to provide service to itself and its affiliates and agree that the language proposed by AT&T should be used in Sections 9.2.4 and 9.3.2.5.

UNE Issue 5

Is AT&T entitled to interconnect at any technically feasible point?

Is SBC required to physically cross connect AT&T's facilities with Ameritech's network?

AT&T's Position

A&T stated that Section 251(c)(2) of TA96 and Section 13-801(b) of the Act impose upon SBC the duty to provide interconnection at any technically feasible point within the requesting carrier's network The parties' agreed language in Section 9.1.1 of the ICA is consistent with these principles. When AT&T, as the CLEC, requests to interconnect with SBC for access to UNEs, SBC is required to provide interconnection at any technically feasible point and the burden, under the rules both of the FCC and in Illinois, is on SBC to demonstrate why the interconnection point and/or interface proposed by AT&T is not technically feasible. SBC's proposed language for Sections 9.11 and 9.13 of the ICA limits the options available to AT&T to those methods of interconnection identified by SBC in those sections. If the Commission accepts SBC's language, then SBC will be able to declare all AT&T requests that are not covered by this SBC proposed language to be "technically infeasible," thus relieving SBC of the requirement to demonstrate that the interconnection point or interface proposed by SBC is not technically feasible. Rather than be required to provide interconnection at any technically feasible point, as Section 13-801 requires, SBC's interconnection obligations would be limited to the methods it has chosen for CLEC interconnection.

SBC's Position

The Commission should approve SBC's proposed section 9.11 which describes, and sets forth the terms and conditions applicable to, three technically feasible, and commonly available, methods available to CLECs for obtaining access to UNEs. By comparison, AT&T's proposed language for section 9.11 is extremely vague and could lead to unnecessary disputes. The Commission should also approve SBC's proposed

sections 9.13-9.16, which identify the many types of cross connections available to AT&T. Contrary to AT&T's objections, SBC's proposed sections 9.11 and 9.13 do not "limit the options" available to AT&T. Rather, AT&T would have the ability to use the BFR process to request other methods of access or cross connections that it believes are technically feasible. AT&T has not, however, identified any such alternative methods of access or cross connections.

The Commission should also reject AT&T's proposed language for section 9.2.5 because it (i) improperly suggests that AT&T should be permitted direct access to SBC's Central Offices, including the Main Distribution Frame (see discussion in the Section of this Brief addressing Collocation Issue 3) and (ii) improperly suggests that SBC should be required to provide AT&T with demarcation points at non-standard locations unilaterally determined by AT&T to be "suitable." Requests for non-standard demarcation points should be made through the BFR process and should be subject to an analysis by SBC to confirm that such demarcation points are technically feasible and do not create operation problems that may jeopardize network reliability.

Commission Analysis and Conclusion

This issue deals with whether or not AT&T is entitled to interconnect at any technically feasible point. Also at issue is whether SBC is required to physically cross-connect AT&T's facilities with SBC's network.

SBC has taken the position that there are really three issues intertwined herein: 1) whether the Commission should approve SBC's version of Section 9.11 which describes the method by which AT&T may obtain access to UNEs and the terms and conditions applicable to each method; 2) whether the Commission should approve SBC's proposed Section 9.13-9.16, which describes the cross-connects available to AT&T; and finally whether the Commission should approve AT&T's proposed Section 9.2.5 which suggests that AT&T would have the unilateral right to require SBC to provide AT&T with access to UNEs at non-standard demarcation points deemed "suitable" by AT&T. Obviously SBC is disputing the terms proposed by AT&T. SBC argues that AT&T has never identified any technically feasible alternatives to the methods of access and cross-connection described in SBC's proposed language and if AT&T ever were able to identify technically feasible alternatives, it would be able to request these methods through the BFR process. SBC further argues that the language for 9.2.5 should be rejected because it improperly gives AT&T the unilateral rights to demand access to UNEs at any demarcation point it deems to be suitable. Finally, SBC finds that AT&T's argument concerning interconnection at any technically feasible point pursuant to Section 13-801(a) and 13-801(b)(1)(B) of the PUA do not apply since these Sections of the PUA deal with interconnection.

AT&T argues that Section 13-801(d) of the Act applies to this issue and requires SBC to provide AT&T with network elements at any technically feasible point. According to AT&T, this Section does not indicate that SBC has the ability to determine the technically feasible point. AT&T agrees that the particular point of access should

dictate the method that should be used and the parties can agree upon the method to provide the interconnection. AT&T contends that under the law they should not be limited in where any interconnection of a UNE takes place.

We find AT&T's proposal to be too general. On the other hand, SBC is attempting to put too many restrictions on AT&T's ability to interconnect at any technically feasible point. SBC has other avenues to protect itself from jeopardizing its network. Moreover, it would still have to be agreed upon by the parties where and what method would be used to interconnect at a technically feasible point. We are adopting a compromise of the parties' language for Section 9.2.5 indicating that the parties should agree to a suitable point of demarcation rather than SBC dictating a suitable location.

Therefore Section 9.2.5 should read as follows:

> For individual network elements or Unbundled Network Elements ordered by AT&T, SBC Illinois shall provide a demarcation point that is agreed to by both parties and if necessary, access to such demarcation point, unless the demarcation point is located on SBC's MDF.
>
> 9.11 Access to UNE Connection Methods. SBC will provide access to network elements on an unbundled basis in combinations of network elements at any technically feasible point including at any point set forth within Article 12 (Collocation).

UNE Issue 6

Should SBC be obligated to provide AT&T, in connection with an order for a UNE or UNE Combination, with any technically feasible network interface as described in industry standard technical references?

AT&T's Position

AT&T contended that SBC is obligated to provide AT&T, in connection with an order for a UNE or UNE combination, with any technically feasible interface (including DS0, DS1 and DS3 interfaces) consistent with the applicable Telcordia and other industry standard technical references. SBC proposes to limit AT&T's access to UNEs to those routes, technologies and facilities as SBC may elect at its own discretion, in clear violation of Section 13-801(d) of the Act, which mandates that SBC must "provide to any requesting telecommunications carrier, for the provision of an existing or a new telecommunications service, nondiscriminatory access to network elements on any unbundled or bundled basis, as requested, at any technically feasible point on just, reasonable, and nondiscriminatory rates, terms, and conditions." AT&T stated that it is only requesting access to UNEs and UNE combinations at those network interfaces (including DS0, DS1 and DS3 interfaces) that are technically feasible. SBC is not entitled to restrict the UNE access Section 13-801(d) affords AT&T to only those routes, technologies and facilities that SBC may elect at its own discretion.

SBC's Position

SBC cannot be required to construct or deploy new interfaces that have not yet been deployed in its network. Moreover, the FCC rules do not provide that AT&T may specify where in SBC's network AT&T will connect. Rather, it is appropriate for SBC to designate the appropriate network interface.

Staff's Position

Staff took no position on this issue.

Commission Analysis and Conclusion

This issue deals with whether or not SBC should be obligated to provide AT&T, in connection with an order for a UNE or UNE Combination, with any technically feasible network interface, as described in Industry Standards Technical References.

SBC is concerned with the language AT&T initially proposed because it seems to give AT&T rights without limitations. SBC avers that AT&T's language is extremely broad and could be construed as requiring SBC to construct or deploy new facilities and adding additional technology that does not currently exist for SBC's network. SBC argues that AT&T's language would be in violation of the 1996 Act and stated its willingness to provide interfaces that currently exist in its network, comply with applicable industry standards, and that are available to other requesting carriers

AT&T, in its Reply Brief, admits that its language was somewhat broad and proposes to add the language "when available" or "where such interface currently exists" in the network to satisfy SBC's concerns. AT&T maintains that SBC's proposed language limits AT&T's access and is directly at odds with Section 13-801(d) of the Act.

SBC has provided no evidence or given the Commission any reason to conclude that AT&T's modified proposal does not satisfy SBC's stated concerns. We find that AT&T's additional terminology satisfies SBC's concerns and we elect to go with AT&T's modified language.

> Section 9.2.3. At such time that AT&T provides SBC with an order for a particular Unbundled Network Element or Combination, AT&T may designate any technically feasible network interface that currently exists in the network, including without limitations DS0, DS1 and DS3 interfaces and any other interface described in the applicable Telcordia and any other industry standard technical references. Any such requested network interface shall be provided by SBC, unless SBC provides AT&T, within fifteen (15) days, with a written notice that it believes such a request is technically feasible, including a detailed statement supporting such claim. Any such denial shall be resolved in accordance with the Alternative Dispute Resolution process set forth in Article (General Terms

> and Conditions) of this Agreement. Unless otherwise specified, any reference to DS1 in this Article 9 shall mean, at AT&T's option, either DS1 AMI or XDSL facility.

UNE Issue 7

What criteria should be used to determine whether network elements or unbundled network elements are "available"?

AT&T's Position

AT&T stated that this Commission, in a fully-litigated proceeding, has already conclusively determined when a network element is "available" such that SBC is required to provide it to AT&T. (Order dated August 15, 2000, Docket 99-0593, at 18-21). The parties' ICA should contain the same criteria established by the Commission in Docket 99-0593 to determine whether a network element or unbundled network element is "available." SBC disagrees with and has appealed the Commission's decision in Docket 99-0593, and simply contends that whether a UNE is available should be determined in accordance with federal law, without regard to this Commission's previous orders. AT&T's proposed ICA language is consistent with the Commission's ruling in Docket 99-0593. AT&T stated that there is no need to relitigate the issue in this Arbitration.

SBC's Position

The Commission should adopt SBC's version of section 9.2.5.1, which provides that, whether or not unbundled network elements are "available" will be determined pursuant to applicable federal law and FCC regulations and, where consistent with federal law and FCC regulations, the rulings of the Illinois Commerce Commission and applicable state law. AT&T's proposal to define "available" by reference solely to the Commission's Order in Docket 99-0593 will unnecessarily require SBC to invoke the Change of Law provision in the event that the FCC or a court defines "available" in a manner inconsistent with the Order in Docket 99-0593.

In its Reply Brief, SBC suggested that the following language by added at the end of Staff's proposal:

> This definition of "available" does not require SBC Illinois to construct network elements for the sole purpose of unbundling those elements for CLECs.

Staff's Position

Staff recommended, in its Initial Brief, that the Commission accept the following language in place of the language proposed by the parties for this issue:

(con't) A facility is available if it is located in an area presently served by SBC-Illinois and otherwise meets the criteria established by the Illinois Commerce Commission in ICC Docket No. 99-0593. (con't)

Commission Analysis and Conclusion

This issue deals with what criteria should be used in determining whether network elements or unbundled network elements are "available".

AT&T argues that the decision of this issue should be decided based on the definition of "available" in Docket 99-0593. According to AT&T this definition is not contrary to the Federal law and should be incorporated in the ICA.

SBC avers that the definition of "available" should be taken from the Federal Rules and Regulations and FCC Regulations and to the extent that they are not inconsistent with the Federal laws any State laws or Commission decisions. SBC is specifically opposing the language as proposed by AT&T because this definition is tied to Docket 99-0593, a decision by the Commission which defined "availability". SBC has filed an appeal of this case and is arguing that this definition is not consistent with Federal laws. SBC argues that this definition could allow AT&T to require SBC to build new facilities to provide a CLEC with an unbundled loop where no loop currently exists. SBC, however, did note that if this Commission chose to adopt the language of Docket 99-0593, it should be modified to indicate that "it does not require SBC to construct network elements for the sole purpose of unbundling those elements for CLECs."

Staff agrees with AT&T's position concerning the definition of "available". They argue, however, that the language should be modified to reflect the definition as coming from Docket 99-0593. Staff further argued that it is necessary to modify the language 1 to incorporate the specific language ordered by the Commission in that docket

Given that all parties agree, we accept the language as modified by Staff, but we must consider SBC's additional clarification that it not be required to construct network elements. We agree that this clarification should be included. Subsection 251(c)(3) of TA96 implicitly requires unbundled access only to an incumbent LEC's existing network. *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), aff'd. i part and remanded, *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

Accordingly, we find that the language should be as follows:

9.2.5.1 (con't.) – A facility is available if it is located in an area presently served by SBC and otherwise meets the criteria established by the Illinois Commerce Commission and ICC Docket No. 99-0593. This definition of "available" does not require SBC to construct network elements for the sole purpose of unbundling those elements for CLECs.

UNE Issue 8(a)

When SBC services are converted to UNE combinations, must SBC guarantee that service to the end user will never be disconnected during conversion?

UNE Issue 8(b)

What charges may SBC recover for such a conversion?

AT&T's Position

AT&T stated that Issue 8(a) addresses those circumstances in which a customer is "converted" or "migrated" from SBC local service or another CLEC using an SBC-provided network elements platform to AT&T whereby AT&T provides local service to the end user using network elements purchased from SBC. AT&T requests that SBC agree not to put customers out of service during UNE-Platform ("UNE-P") migrations in those instances where SBC is not required to perform any field work and SBC refuses. AT&T stated that Section 13-801(d)(6) of the Act provides that when a telecommunications carrier requests a network elements platform referred to Section 13-801(d)(4) without the need for field work outside of the central office, SBC shall provide the requested network elements platform without any disruption to the end user's services. The Commission confirmed this requirement in its Order in Docket 01-0614. In fact, the Commission concluded that when the end user customer being migrated has an existing high-speed connection provided over the access line via a splitter, the requesting carrier seeking to serve the customer is entitled to use the existing splitter because that is the only way to ensure that the end user's features remain intact. The Commission stated that "Any other scheme would, of necessity, require some disruption of service" in violation of Section 13-801(d)(6). Order, p. 32, ¶80. AT&T's proposed language should be adopted consistent with Section 13-801(d)(6) as implemented by the Commission.

As to Issue 8(b), AT&T stated that this Commission has already determined that when the local service of a carrier is migrated from SBC to a CLEC using the UNE-P, AT&T shall pay SBC the monthly Commission-approved recurring TELRIC rates of the UNEs purchased and the applicable nonrecurring Commission-approved rate elements and TELRIC rates. See Docket 01-0614 Order, p. 171, ¶590. The current recurring loop rates were established in the Commission's TELRIC Order dated February 17, 1998 in Docket 96-0486/0569. The current recurring unbundled local switching and shared transport rates were established by the Commission in its Order dated July 10, 2002 in Docket 00-0700. The sole nonrecurring charge applicable to a UNE-P conversion is a record work only charge of $1.02. See ICC Order dated October 16, 2001 in Docket 98-0396 adopting the $1.02 nonrecurring charge set forth in the tariff attached to the Joint Reply Brief of AT&T and WorldCom. See also Ill. C.C. No. 20, Part 19, Section 15, 3rd Revised Sheet No. 9. AT&T agrees to pay all Commission-approved recurring and nonrecurring TELRIC rates for network elements and network element combinations.

SBC's Position

When converting a service to UNEs, SBC will not separate UNEs that are already combined and does not expect to disrupt service. However, there are a number of steps and variables involved in migrating an existing service to an existing UNE combination, and SBC cannot guarantee that service will never be disconnected and facilities will never be slightly rearranged, and cannot reasonably be required to provide such a guarantee. SBC's language provides that there will not be an unnecessary disruption to the end user's services. Accordingly, the Commission should approve SBC's proposed section 9.3.2.1 and reject AT&T's proposed section 9.3.1.2.

AT&T's arguments regarding line splitting, which its witness presented in testimony purporting to address Issues 8 and 13, bear no relation to the contract language being contested in UNE Issue 8 and, in any event, were fully considered and rejected by the Commission earlier this year in Docket 01-0662. Accordingly, AT&T's line splitting arguments should be disregarded.

Commission Analysis and Conclusion

Issue 8(a) deals with situations in which a customer is converted from SBC local service or another CLEC using an SBC-provided network element platform to AT&T where AT&T provides local service to the end user using network elements purchased from SBC. AT&T proposes that said migration should take place without interruption of the customer service during the UNE-P migrations where SBC is not required to perform any field work.

AT&T cites Section 13-801(d)(6) of the Act to indicate that SBC should provide the requested network element platform without any disruption to the end user's service. They argue that the Commission confirmed this requirement in Docket 01-0614.

As for Issue 8(b), AT&T admits that they should have to pay monthly Commission-approved recurring TELRIC rates of the UNEs purchased in the applicable non-recurring Commission-approved rate elements in TELRIC rates for this service.

SBC disagrees with AT&T's assertion that SBC refuses to agree not to put customers out of service when migrating retail service from SBC to AT&T using the UNE-P. SBC agrees that it will not disconnect or separate UNEs that are already combined when it is requested to migrate a customer over to the UNE-Platform and further agree that there should be no disruption to the customer's service as a result of this migration. However, there are situations such as the reassignment of ports and switch translations that may cause momentary service disruptions which are generally unnoticeable to customers. SBC feels that this issue only deals with line sharing arrangement in which the splitter is provided by SBC.

With respect to the issue of service disruption and platform migrations requiring no field work, we find AT&T's proposed language is consistent with the requirements of

Section 13-801(d)(6) of the Act. The guiding principle is that consumers should have uninterrupted service when switching service providers. Impediment to such consumer choice should be minimized taking into account any pertinent technical and economic considerations. In specific instances, the principle underlying AT&T's proposed language concerning minimal service disruption is correct, but SBC points out some technical considerations, not rebutted by AT&T. These minimal level service disruptions should be accounted for in the proposed language. Therefore, we include the following modifications to AT&T's proposed language for Section 9.3.1.2:

> 9.3.1.2 – When AT&T requests a network elements platform referred to in Section 9.3.1 above without the need for field work outside of the central office, for an end user that has existing local exchange telecommunications service provided by SBC or by another CLEC through SBC's network elements platform, unless otherwise agreed to by AT&T, SBC shall provide AT&T with the requested network elements platforms with any disruption to the end user's services reduced to a minimum or, where technically feasible given current systems and processes, no disruption should occur. Where disruption is unavoidable due to technical considerations, SBC shall accomplish such migrations to minimize any disruption detectable to the end user. Where necessary or appropriate, SBC Illinois shall coordinate it with AT&T's representatives to accomplish this goal. AT&T may order a UNE Platform using a single Local Service Request (LSR). It shall not be necessary for AT&T to collocate an SBC Illinois central office in order to purchase the UNE-Platform. SBC Illinois shall provide network elements platforms, including the UNE-Platform to AT&T even if AT&T is collocated in the relevant central offices. If Unbundled Local Switching Shared Transport (ULS-ST) is used, SBC Illinois will be responsible for engineering provisioning and maintenance of these components to ensure they support the agreed upon rate of service.

UNE Issue 9(a)

May AT&T combine UNEs with other services (including access services) obtained from SBC?

UNE Issue 9(b)

May AT&T combine network elements made available by SBC with other SBC provided Network Elements?

AT&T's Position

AT&T proposes that it be able to combine UNEs with network components provided by AT&T and/or other third party providers and also with other services, including access services, obtained from SBC. Section 13-801(a) provides that SBC

shall provide network elements to AT&T to enable the provision of any and all existing and new telecommunications services within the LATA, including, but not limited to, local exchange and exchange access and that the Commission shall require SBC to provide interconnection, collocation, and network elements in any manner technically feasible to the fullest extent possible to implement the maximum development of competitive telecommunications services offerings. To the extent it is technically feasible for SBC to provide AT&T with network elements and AT&T is able to combine those network elements with access service or, for that matter, any other services obtained from SBC to foster the maximum development of competitive telecommunications services offerings, including but not limited to local service and access service, Section 13-801 of the Act expressly permits AT&T to do so. As discussed in conjunction with UNE Issue 3 above, AT&T and SBC have agreed that AT&T will comply with all Commission-imposed restrictions on the provision of UNEs. AT&T acknowledges that the Commission, in its Order in Docket 01-0614, has elected to impose a restriction on allowing the loop/transport combination known as the Enhanced Extended Link, or EEL, to share the same physical facilities as special access services until the Commission can further examine these issues. See Order, p. 85. Certainly AT&T will comply with that ruling and, if the Commission deems it necessary, AT&T is willing to add a sentence to Section 9.3.2.5 stating that "AT&T agrees to comply with the commingling restrictions imposed by the Illinois Commerce Commission in ICC Docket No. 01-0614." To the extent the FCC's rules upon which this restriction is based are revised in the FCC's anticipated Triennial Review Order, AT&T agrees to invoke the change of law provision to effectuate that change.

AT&T agreed to withdraw this issue in the Reply Testimony of Danial Noorani consistent with the testimony filed by Staff witness Genio Staranczak. Accordingly, AT&T agrees to strike the last sentence of its proposed language contained in Section 9.3.2.5 of the agreement beginning with "Notwithstanding" and through "Elements."

SBC's Position

AT&T's proposed language for section 9.3.2.5 should be rejected because it would require SBC to permit and/or provide UNE combinations to an extent much broader than that required by governing law. In particular, AT&T's language does not guard against impermissible "commingling" of non-local and local services.

Staff's Position

Staff recommends that the language of the interconnection agreement be modified to reflect that AT&T is not allowed to combine unbundled network elements in a manner that will circumvent FCC commingling restrictions as articulated in its Supplemental Order Clarification.

Commission Analysis and Conclusion

Issue 9(a) deals with whether or not AT&T can combine UNEs with other services, including access service, obtained from SBC.

SBC asserts that AT&T's language should be rejected because it would require SBC to permit and/or provide UNE Combinations to an extent much broader than is required by governing law. In particular AT&T's language does not guard against impermissible "commingling" of non-local and local services. SBC goes on to indicate that this language would improperly allow AT&T to circumvent the rule against impermissible commingling adopted by the FCC in its Supplemental Order Clarification in CC Docket No. 96-98 FCC 00-183, 9128 (Rel. June 2, 2000).

Staff agrees with SBC that the language proposed by AT&T is too broad. Specifically, Staff feels that AT&T is not allowed to combine Unbundled Network Elements in a manner that would circumvent FCC commingling restrictions as articulated in its Supplemental Order Clarification. Therefore, Staff has recommended some alternative language which is consistent with the supplemental order and places the proper restrictions on AT&T.

AT&T is agreeable to the language that has been provided by Staff. We find that this language satisfies the concerns raised by SBC.

Therefore the language for Section 9.3.2.5 should be as follows:

> At the request of AT&T, SBC shall also provide Unbundled Network Elements to AT&T in a manner that allows AT&T to combine those Unbundled Network Elements to provide a telecommunications service. SBC shall permit AT&T to combine any Unbundled Network Element(s) obtained from SBC with Compatible Network Components provided by AT&T or provided by third parties to AT&T or combined any Unbundled Network Element(s) with other services (including access services) obtained from SBC Illinois in order to provide telecommunication services to AT&T, its end users and its affiliates as long as these combinations are consistent with FCC's Supplemental Order Clarification in CC Docket No. 96-98, FCC 00-0183.

Issue 9(b) deals with whether AT&T may combine network elements made available by SBC with other SBC provided network elements. Staff argued that AT&T's proposed language at the end of Section 9.3.2.5 as written is redundant with Section 9.3.2.5, as a whole, and therefore should be eliminated. AT&T has agreed to withdraw this proposed language and therefore Issue 9(b) is eliminated.

UNE Issue 10

SBC Issue: Should the ICA contain the limitations on an ILEC's obligation to combine which are set forth in Verizon Comm. Inc.?

AT&T Issue: Is SBC obligated to combine requested network elements for AT&T?

AT&T's Position

AT&T stated that there is no legitimate dispute or question that SBC is obligated to combine requested network elements for AT&T. SBC's proposal to impose its fabricated "limitations" ostensibly based on the Verizon decision, which simply reinstated the FCC's combination rules, must be rejected in total. In its Order dated October 16, 2001 in Docket 98-0396, the Commission ordered SBC (then Ameritech) to provide CLECs with all network element combinations that it ordinarily combines for its own use or the use of its end user customers, including new UNE-P combinations used to serve new lines and additional, or second, lines. Order, pp. 95-97.

On June 30, 2001, the Illinois General Assembly enacted Section 13-801 of the Act. Section 13-801(a) requires SBC to provide AT&T network elements on any unbundled or bundled basis, as requested, at any technically feasible point on just, reasonable, and nondiscriminatory rates, terms and conditions. (emphasis supplied). Section13-801(d)(3) further requires SBC to combine any sequence of unbundled network elements that it ordinarily combines for itself, including but not limited to, unbundled network elements identified in The Draft of the Proposed Ameritech Illinois 271 Amendment (I2A) found in Schedule SJA-4 attached to Exhibit 3.1 filed by Illinois Bell Telephone Company under Docket. 00-0700. In Docket 01-0614, the Commission interpreted the phrase "ordinarily combined" to require SBC to combine the requested network elements if "a 'requested combination is of a type ordinarily used or functionally equivalent to that used by the Company or the Company's end users where the Company provides local service,' and would excuse Ameritech from combining UNEs in the EELs tariff if: (1) the Company does not provide services using such a combination of unbundled network elements; (2) where the Company does provide services using such combinations, such provisioning is extraordinary (i.e., a limited combination of elements created in order to provide service to a customer under a unique and nonrecurring set of circumstances) or; (3) an EEL combination contains a network element that the Commission does not require the Company to provide as un Unbundled Network Element." Order, p. 56. SBC tariffed twelve "ordinarily combined" network element combinations, including new UNE-Platform combinations, pursuant to the Commission's Order in ICC Docket No. 01-0614 at Ill. C.C. No. 20, Part 19, Section 15.

AT&T stated that there is no serious dispute between the parties that SBC is required to provide all network elements that it "ordinarily combines" for itself. In fact, SBC and AT&T have agreed to language included in Section 9.3.1 of the ICA that tracks almost entirely verbatim the language of the Commission's Order in ICC Docket No. 01-0614 and requires SBC to provide to AT&T all network element combinations that it

"ordinarily combines" for itself and that it is required to provide pursuant to state law. The currently tariffed combinations are set forth in Section 9.3.6, Table 1 of Attachment C to AT&T's arbitration petition. Despite the Commission's directives and the agreed upon language of the parties, SBC proposes language for Section 9.3.3 that purports to apply to new network element combinations "[w]ithout affecting the other provisions hereof" and which is ostensibly based upon some meaning that SBC has attributed to the Verizon decision with which AT&T disagrees. The crux of SBC's proposal appears to require AT&T to make a combination itself if one of several conditions is met, including when AT&T is collocated at an SBC central office. SBC's vague, broad and discriminatory language is directly at odds with Section 13-801 of the Act and this Commission's Orders in ICC Docket Nos. 98-0396 and 01-0614 and is inconsistent with and irreconcilable with the parties' agreed upon language in other provisions of Section 9.3 – Combinations of Network Elements, including Section 9.3.1.

AT&T stated that SBC's language is also curious given the fact that in its Verizon decision, the United States Supreme Court reinstated the FCC's Rule 315(c) in its entirety, and held that requirements that incumbents provide combinations of elements promotes the Act's "goals of competition" and "nondiscrimination" in access to network elements. Verizon, 535 U.S. at 538. 47 C.F.R. § 315(c) requires Ameritech "to perform the functions necessary to combine elements" even if they are "not ordinarily combined in SBC-Ameritech's network," provided that "such combination is (i) technically feasible, and (ii) would not impair the ability of any other Telecommunications Carriers to obtain access to Network Elements on an unbundled basis or to Interconnect with SBC-Ameritech's network." AT&T's proposed § 9.3.3 tracks this language almost verbatim. The Verizon decision rejected the Eighth Circuit's interpretation of § 251(c)(3) and reinstated AT&T's proposal requiring SBC to combine elements that Ameritech does not ordinarily combine for itself. As noted, this provision (§ 9.3.3) is identical to Rule 51.315(c), and if there were limitations in the Act that were not reflected in the Rule, the Supreme Court would have vacated this rule for failing to adopt essential limitations on the incumbent's duties. However, the Supreme Court in Verizon upheld Rule 315(c) on the ground that it was a valid means of implementing the requirement of nondiscriminatory access even as applied to elements that the incumbent does not ordinarily combine. The Court reasoned that the "incumbent could make these combinations more efficiently than the entrant," and that incumbents would "provide the combination itself if a customer wanted it or the combination otherwise served a business purpose." Verizon, 535 U.S. at 538. There is no requirement in Rule 315(c) or in the Local Competition Order that SBC's duty to combine network elements is limited to those circumstances where the "CLEC is unable to do the combining itself." Rather, the underlying basis for Rule 315(c) and the Act is that CLECs are inherently incapable of themselves effecting combinations of the incumbents' network elements at the same costs that the incumbents incurs and that the "sensible way" to achieve the Act's goal of "nondiscrimination" in access to network elements and "competition" is to require incumbent LECs to make these combinations whenever CLECs request them. Verizon, 535 U.S. at 538. SBC's proposed language for UNE Issue 10 is unlawful and is inconsistent and irreconcilable with the Act, this Commission's orders and the parties' agreed upon language in Section 9.3 and, as such, should be rejected. AT&T's

language, on the other hand, tracks the language of FCC Rules 315(a) and (c) almost verbatim and should be adopted.

SBC's Position

The issue statement is misleading because it suggests that SBC will not agree to combine network elements for AT&T. To the contrary, SBC has agreed to combine unbundled network elements, subject to the limitations the Supreme Court set forth in Verizon Comm. v. FCC, 535 U.S. 467 (2002). In that decision, the Supreme Court held that "the [combination] duties imposed under the rules are subject to restrictions limiting the burdens placed on the incumbents" 535 U.S. at 535, and it went on to enumerate those restrictions. As a federal court recently held when AT&T and SBC litigated this very issue, an interconnection agreement that does not reflect the Verizon restrictions violates TA96.

Staff's Position

Staff recommends adoption of AT&T's language concerning SBC's obligation to combine UNEs because that language is consistent with TA96 and the FCC's rules.

Commission Analysis and Conclusion

The Commission has examined thoroughly those portions of the Supreme Court's ruling in *Verizon v. FCC*, 535 U.S. 467, 122 S.Ct. 1646 (2002) that concern FCC Rules 47 CFR Section 51.315(c) through (f). We agree with SBC that the Supreme Court's holding in *Verizon v. FCC* would place certain limitations on an ILECs' obligations under federal law to combine network elements for requesting carriers. At the same time, as acknowledged by SBC itself, the precise meaning and potential practical application of such limitations is quite unclear for the moment, and awaits further explication by regulatory, legislative or judicial bodies. (See, for example, SBC Illinois' Proposed Section 9.3.3.2: "….As of the Effective Date, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty….".). This is true both for those element combinations that are "not ordinarily combined in the incumbent LEC's network" (combinations required under FCC Rule 47 CFR Section 51.315(c) but not under Illinois law), and those element combinations that are "ordinarily combined" by SBC Illinois.

We find that SBC's proposed Sections 9.3.3.9.1 through 9.3.3.9.5 (including 9.3.3.9.5.1 and 9.3.3.9.5.2) essentially reproduce certain provisions of the *Verizon v. FCC* decision, and would simply incorporate these provisions into this Agreement. On that basis, these SBC proposed Sections are approved for inclusion in the Agreement. We also approve for inclusion in the Agreement SBC's proposed Sections 9.3.3.9, provided it is amended as follows:

> 9.3.3.9 Without affecting the other provisions hereof, SBC's UNE combining obligations referenced in this Section 9.3

apply under federal law ~~only~~ ~~only~~ in situations where each of the following is met:

We do not approve for inclusion in the Agreement SBC's proposed Section 9.3.3.1.1. Consistent with our findings and decision concerning UNE Issue 14, any implementation of any aspects of *Verizon v. FCC* under this Agreement would occur pursuant to its change of law provision. Therefore inclusion of proposed Section 9.3.3.1.1 (which goes to processes and procedures) would be premature at this time.

We reject AT&T's arguments that the text of the Supreme Court decision addressing FCC combination rules is "dicta" that is not pertinent to our decision in UNE Issue 10. We do not accept AT&T's position that, with respect to FCC Rules 47 CFR Section 51.315(c) through (f), in *Verizon v. FCC* the Supreme Court did nothing more than simply uphold these rules. At the same time, our decision does not address the apparent substantive disagreements between AT&T and SBC concerning the specific imports of *Verizon v. FCC.* Our decision preserves the rights and abilities of all concerned parties, including AT&T, to be heard on issues concerning the proper interpretation and potential practical application of this Supreme Court decision.

UNE Issue 11(a)

Should the ICA contain language specifically obligating AT&T to follow the FCC's Supplemental Order Clarification when utilizing EELs or does the Parties' agreed to language in Section 9.1.1 adequately describe AT&T's obligation?

UNE Issue 11(b)

Is SBC required to combine UNEs with non-251(c)(3) offerings?

AT&T's Position

AT&T stated this issue is related to UNE Issues 3 and 9(a) and addresses SBC's alleged concern that AT&T will use UNEs to provide exchange access or in conjunction with (i.e., combined with) exchange access. As AT&T explained in discussing UNE Issues 3 and 9(a), AT&T is obligated and has agreed to comply with the Commission's ruling regarding the applicability of the FCC's Supplemental Order Clarification when purchasing UNEs from SBC. That obligation and agreement is already encompassed by the parties' agreed language in Section 9.1.1 of the Agreement. Section 9.1.1 provides that SBC shall provide all bundled and unbundled network elements to AT&T in accordance with all applicable federal and state statutes, orders, rules and regulations. As such, AT&T's use of network elements is constrained by any restrictions this Commission has placed on the use of UNEs, including commingling and restrictions on the use of UNEs to provide or in conjunction with special access services. To the extent the Commission desires that Section 9.3.3 of the Agreement restate the language AT&T

has proposed in response to Staff witness Dr. Staranczak for UNE Issue 3, AT&T does not oppose that modification.

SBC's Position

SBC's language in section 9.3.3.14.1 sets forth the FCC's limitations on the use of EELs and incorporates the FCC's Supplemental Order Clarification. This language is consistent with the Company's tariff approved by the Commission in Docket 01-0614 and is supported by Staff.

SBC's language in section 9.3.3.14.2 makes it clear that SBC is not required to combine UNEs with non-UNE offerings. Pursuant to FCC rules, SBC is only obligated to combine UNEs, and to combine UNEs with network elements possessed by CLECs. As discussed in the Section of this Brief addressing UNE Issue 1, the only network elements SBC can lawfully be required to provide to AT&T at all – whether in combination or not – are those network elements that have been "unbundled." The Supreme Court's decision in Verizon Comm. Inc. does not alter the law regarding the unbundling of network elements, nor does it obligate SBC to combine UNEs with non-251(c)(3) offerings. According to the Supreme Court: "Rule 315(c) requires an incumbent to 'perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined." Verizon Comm. Inc., 122 S.Ct. at 1684. Similarly, in Docket 01-0614, the Commission interpreted Section 13-801(d)(3) of the PUA as not requiring SBC to combine UNEs with network elements that have not been unbundled.

Staff's Position

Staff recommends adoption of SBC's proposed Section 9.3.3.14.1 because it limits AT&T's right to use a combination of SBC's unbundled loop and unbundled transport network elements as provided in the FCC's Supplemental Order Clarification.

Staff recommends adoption of revised language for Section 9.3.3.14 to allow AT&T to provide telecommunications services to end user customers using combinations of elements that SBC ordinarily combines in its own network.

Commission Analysis and Conclusion

SBC has proposed language for Section 9.3.3.14.1 that essentially provides that AT&T must comply with the restrictions set forth in the FCC's Supplemental Order Clarification when AT&T purchases and SBC provides an EELs Combination consisting of an Unbundled Loop and Unbundled Dedicated Transport.

AT&T contends that whatever position the Commission adopts in UNE Issue 3 will also resolve this issue, thus it avers that SBC's Section 9.3.3.14.1 should be stricken.

We agree with Staff's recommendation that SBC's proposed Section 9.3.3.14.1 be adopted because it limits AT&T's rights to use a Combination of SBC's Unbundled Loop and Unbundled Transport Network Elements as provided in the FCC's Supplemental Order Clarification. We agree with SBC that AT&T's language is too broad and imposes rights and obligations on SBC in violation of the FCC's Order.

Based on the above, the Commission will adopt the language of SBC for Section 9.3.3.14.1.

Section 9.3.3.14.2 deals with whether or not SBC is required to combine UNEs with non-251(c)(3) offerings. SBC's language goes beyond the limitations set forth in the Supplemental Order Clarification. Both AT&T and Staff argue that the language proposed by SBC should be rejected. SBC's proposal would also violate 13-801(a) of the Illinois Public Utilities Act. Therefore, SBC's language for 9.3.3.14.2 will not be included in this Section.

AT&T is requesting that it be allowed to provide Telecommunication services to end users using combinations of elements that SBC ordinarily combines in its own network.

Staff agrees with AT&T's proposal and feels that it would increase competition, reduce prices and enhance customer service. SBC's proposal would make it more burdensome and costly to provide additional products over a UNE-P, particularly DSL services which would effectively reduce competition for these additional products. Staff feels that AT&T's language is too broad and asked SBC to combine elements it normally would not combine and does not take into account restrictions placed on the definition of "ordinarily combined" as ordered by the FCC in docket 96-98. Staff is proposing alternative language based on the FCC restrictions.

In it Reply Brief, AT&T contends that Staff's language does not accurately reflect the language of the FCC. It maintains that the language it provided adequately addresses this and should be adopted.

SBC does not agree with either Staff's or AT&T's proposals. It argues that Staff's proposal should be rejected because it would require SBC to combine network elements that have not been unbundled or to combine a UNE with a non-UNE offering in contravention of Federal and State law.

We do not agree with SBC and we adopt Staff's position which includes the appropriate FCC restrictions. The language for Section 9.3.3.14 should be as follows:

> Upon AT&T's request, SBC Illinois shall perform the functions necessary to combine SBC network elements if those network elements are ordinarily combined in SBC Illinois' own network provided that such combinations are (1) technically feasible and (2) would not impair the ability of other telecommunications carriers to obtain access to network

elements on an unbundled basis or to interconnect with SBC's network. In addition, upon a request of AT&T that is consistent with the above criteria, SBC shall perform the functions necessary to combine SBC's network elements with elements possessed by AT&T in a technically feasible manner to allow AT&T to provide telecommunications service.

UNE Issue 12

SBC Issue: Is SBC entitled to compensation for work performed to combine UNEs as set forth in Verizon Comm, Inc.?

AT&T Issue: Should SBC be permitted to charge a "glue" charge when SBC combines UNEs?

AT&T's Position

For combinations it performs for AT&T, SBC will charge the "applicable service order charges," as well as all "recurring and nonrecurring charges for each individual UNE and cross connect ordered." SBC also proposes to charge AT&T "a fee(s) for work performed by SBC in providing the new combinations." For such work that may be required under federal or state rules, SBC will charge "Time and Material charges as reflected in State-specific pricing." See SBC's proposed contract language for Sections 9.3.3.8 and 9.3.3.12. AT&T stated that these "glue charges" constitute blatant double recovery because time and material charges are already reflected in the nonrecurring charges for each element. AT&T agreed to pay SBC the Commission-approved TELRIC-based recurring and nonrecurring charges as set forth in the Pricing Schedule to the ICA.

For the past seven years, since the TA96 was enacted, AT&T has paid Commission-approved and TELRIC-based recurring and nonrecurring charges for UNEs and UNE combinations. The nonrecurring charges are, by their very nature, the charges SBC assesses for the work and time required to combine the requested elements. Additional charges (that have not been approved by the Commission) should not be assessed to AT&T for any requested combinations; in fact, any such additional charges would, by definition, be in addition to the appropriate, TELRIC-based charges and would therefore be per se unlawful. AT&T stated that the FCC's TELRIC pricing rules require that SBC charge no more for combinations of UNEs than the TELRIC costs of the combinations. In fact, the Commission, in its Order dated June 11, 2002 in Docket 01-0614, has very clearly stated that SBC's options for recurring and nonrecurring charges for UNEs are limited to the applicable "Commission-approved" rates – and no more -- when SBC sets rates for new elements or seeks to increase an existing rate for a network element or network element combination. (See Order in Docket 01-0614, ¶ 590). AT&T concluded that, based on this Order, the Commission must reject any "glue charge" above and beyond Commission-approved TELRIC rates.

SBC's Position

SBC's proposed sections 9.3.3.8 and 9.3.3.12 provide that to, the extent that SBC provides UNEs or UNE combinations for which rates are not listed in the Pricing Schedule, or requires work not covered by those rates, SBC is entitled to be compensated for the necessary work to provide such UNEs or UNE combinations. It is inappropriate to deny SBC compensation for work performed to combine UNEs. In Verizon Comm. Inc., the United States Supreme Court rules that CLECs must pay "a reasonable cost-based fee" for "whatever the incumbent does" to perform the functions necessary to combine. Verizon Comm. Inc., 122 S.Ct. at 1685.

Staff's Position

Staff recommends that SBC be compensated for combining previously uncombined elements. Staff, however, recommends that the interconnection agreement clearly state that SBC's compensation will be TELRIC based, and that the bona-fide request process set forth in the tariff be used instead of the process set forth in Schedule 2.2 of the interconnection agreement.

Commission Analysis and Conclusion

AT&T is objecting to SBC's proposed language on the grounds that SBC is attempting to impose a "glue" charge on AT&T that it has attempted to impose in other states. AT&T argues that this attempt to impose this glue charge is not the TELRIC-based non-recurring charges SBC is entitled to for combining network elements for CLECs, but rather, is in addition to this charge. AT&T points out that SBC's proposed language is an attempt to imply that the Verizon case somehow modified the FCC's Rules on Combinations and how charges should be assessed. AT&T feels that the Verizon decision did not decide anything new or different regarding SBC's combining obligations and what fees that they can recover for such work. AT&T also points out that it agrees with Staff; that the Verizon language is dicta and does not impose any new obligations by the FCC. Finally, AT&T agrees with Staff that SBC is entitled to be compensated for combining network elements at the TELRIC-based rates.

SBC argues that it is not seeking double recovery of costs, as alleged by AT&T. SBC proposes that these sections apply to UNEs and UNE Combinations through the BFR and BFR-OC processes for which rates are not listed in the pricing schedule. SBC's options for recurring and non-recurring charges from UNEs are limited to the applicable Commission-approved rates as ordered in Docket 01-0614. This order did not follow the Commission's pre-approval of rates as required for UNE Combination provided pursuant to the BFR-OC process if the Combinations have not had the rates established.

SBC is willing to agree with AT&T and Staff that the fees for combining work must be TELRIC-based.

Staff agrees with SBC that it should be entitled to obtain a fee for combining work that is required. Staff also maintains that the rates should be based on the BFR-OC process as addressed in the company tariff and has been reviewed and approved by the Commission in Docket 01-0614. Staff recommends that SBC's language be modified to adopt this position.

Both AT&T and SBC disagree with Staff's proposal of the BFR-OC process. The Bonafide Request ("BFR") process and BFR-OC process as set forth in schedule 2.2 has already been agreed upon by both parties.

Based on the above, we agree with SBC's proposal that they should be entitled to the applicable charges based on Commission-approved TELRIC-based fees. We also agree with the parties that there is no reason to modify their BFR and BFR-OC process.

The language for 9.3.3.8 shall state the following:

> In addition to any other applicable charges, SBC may charge a Commission-approved TELRIC-based fee for any combining work that is required to be done by SBC pursuant to a BFR or BFR-OC, as applicable, under Schedule 2.2 of this Agreement.

UNE Issue 13

Should the ICA contain terms and conditions relative to "pre-existing" and new combinations as proposed by SBC?

AT&T's Position

AT&T stated that SBC's attempt to draw a distinction between pre-existing combinations and new combinations is nothing more than an attempt to shirk its combining obligations and its obligation to enable AT&T to provide line splitting using the UNE-Platform, as SBC is required to do in Michigan, Indiana, Ohio and Wisconsin.

For example, SBC's proposed language excludes from the definition of a "pre-existing combination" all instances in which the loop facility is being used to provide both a voice service and also an xDSL (i.e., data) service. This language has the practical effect of excluding all UNE-Platform arrangements where data service is being provided in a line splitting arrangement from SBC's definition of a "pre-existing" combination. SBC's proposed contract language attempts to define as narrowly as possible what constitutes a "pre-existing" combination as opposed to a new combination – undoubtedly to limit and restrict its unbundling and combining obligations to the fullest extent possible, while it would define "new" combinations not subject to Rule 315(c) very broadly, so that it can either refuse to combine them or charge AT&T an exorbitant fee for combining them. SBC's proposal is contrary to its obligation to "combine any sequence of unbundled network elements that it ordinarily combines for itself" as

required by Section 13-801(d)(3) of the Act and thes Commission's Order in Docket 01-0614.

AT&T stated that the ability to offer both voice and data utilizing a UNE-P product is critical in order for CLECs to have the ability to reach residential and small business customers on a mass-market scale. Robust residential and small business local exchange competition in Illinois for either voice or data services cannot develop without it. Making data services overly expensive, difficult, or impossible for competitors to provide in conjunction with UNE-P over a single local loop would do great harm to competition for both combined voice and data services and for voice services themselves. SBC takes the position that once the cabling to the CLEC DSLAM is installed for the UNE-P customer, the line splitting arrangement is no longer UNE-P. According to SBC's proposed contract language, any subsequent changes to this customer, such as adding DSL service to an end user that is already receiving its voice service via the UNE-Platform, would be a new UNE combination even if the customer is being served using the very same loop, switch and transport elements being used before the data service was added. SBC's position is inconsistent with the requirements established by the FCC and other state commission orders that have established the line splitting requirements that apply to ILECs like SBC. For example, SBC's position conflicts with the FCC's Reconsideration Order on line splitting. Paragraph 19 of that Order requires SBC to "permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its own splitter." The FCC explained that, as it stated in its Texas 271 order, an incumbent has a "current obligation" to allow a competing carrier… to provide combined voice and data services on the same loop" (¶ 18) and "must provide the loop that was part of the existing UNE-platform as the unbundled xDSL-capable loop, unless the loop was used for the UNE-Platform is not capable of providing xDSL service." Thus, the FCC's order clearly contemplates requiring SBC to allow line splitting over UNE-P. SBC's position similarly conflicts with the requirements imposed upon it by the Michigan Public Service Commission, the Indiana Utility Regulatory Commission, the Ohio Public Utility Commission and the Wisconsin Public Service Commission, all of which have concluded that SBC must permit line splitting in conjunction with, or over, the UNE-Platform.

AT&T pointed out that despite these numerous decisions to the contrary, SBC continues to base its position on the "new" versus "currently combined" dichotomy referred to above. For example, SBC apparently continues to require CLECs to "order" an xDSL loop when line splitting is provisioned over UNE-P. SBC's position appears to conflict with the FCC's requirement that CLECs be able to re-use loops currently being used to provide voice services. That is, contrary to the FCC and state commission orders that allow CLECs to provision line splitting on UNE-P, SBC takes the position that once line splitting is incorporated, UNEs are no longer "currently combined." This has many ramifications, most of which will only increase the costs and inefficiency of CLEC voice/data sharing arrangements. The Commission should reject SBC's proposed language for Sections 9.3.2.1 (UNE Issue 8) and 9.3.2.2 of the new ICA in order that SBC will be obligated to provide the UNE-P/line splitting arrangement, and

the UNE-P/post-line splitting arrangements are treated as UNE-P, i.e., ordered as UNE-P, maintained as UNE-P, tested as UNE-P, repaired as UNE-P, and charged for as UNE-P. The Commission should reject SBC's language for Section 9.3.3.1 of the ICA (see SBC's proposed contract language for Issue UNE-13), which would allow SBC to deem line splitting a "new combination" which could be refused, or charged at exorbitant BFR rates.

SBC's Position

The Commission should approve SBC's proposed section 9.3.3.1, which sets forth a definition of "pre-existing combinations." It is important to make a distinction between pre-existing UNE combinations (i.e., UNEs that are currently physically combined at the time of the CLEC request) and new UNE combinations for which work must be performed by SBC to combine UNEs. That distinction has been recognized by the Commission in Docket 01-0614 and is reflected in the agreed upon language of section 9.3.1. The definition of pre-existing combination contained in section 9.3.3.1 is reasonable and is consistent with the agreed upon terms of other provisions of the Agreement, as well as the definition of "Pre-existing combination" contained in the Company's tariff filed in compliance with the Order in Docket 01-0614. The Commission should also approve SBC's proposed section 9.3.3.2, which provides that reconfigurations of existing qualifying special access services to combinations of loop and dedicated transport on terms and conditions consistent with the Supplemental Order Clarification are not to be considered a new UNE combination.

Staff's Position

Staff recommends adoption of SBC's proposed language for Sections 9.3.3.1 and 9.3.3.1.1 because it properly distinguishes between "pre-existing UNE combinations" and "new combinations" in terms of applicable charges.

Commission Analysis and Conclusion

This issue deals with whether or not the ICA should contain terms and conditions relating to "pre-existing and new combinations" as proposed by SBC. SBC claims that it is attempting to distinguish between new and pre-existing combinations for the purpose of pricing.

AT&T is arguing that SBC is attempting to narrowly define pre-existing combinations so that it can refuse to combine them or to charge AT&T an exorbitant fee for combining them.

SBC believes that the Commission should approve its proposed language for 9.3.3.1 which sets forth a definition of "pre-existing combinations". It asserts that it is important to make a distinction between pre-existing UNE Combinations (UNEs that are currently physically combined at the time of the CLEC request) and new UNE combinations for which work must be performed by SBC to combine the UNEs. SBC

argues that this definition is consistent with the Commission decision in Docket 01-0614 and is reflected in the agreed upon language of 9.3.1. Finally, SBC argues that the Commission should approve its proposed language for Section 9.3.3.2 which provides for reconfiguration of existing qualifying special access services to combinations of loop and dedicated transports on terms and conditions consistent with the Supplemental Order Clarification.

AT&T argues that SBC is attempting to shirk its combining obligations and its obligation to enable AT&T to provide line splitting using the UNE-Platform. It believes that the language has a practical effect of excluding all UNE-Platform arrangements where data service is being provided in a line splitting arrangement from SBC's definition of pre-existing combination. AT&T argues that SBC's definition of pre-existing combinations as opposed to new combinations would limit and restrict its unbundling and combining obligations to the fullest extent possible. AT&T points out that its ability to offer both voice and data utilizing a UNE-P product is critical for it to compete in the residential and small business market on a mass scale. AT&T asserts that SBC's position is contrary to its agreement in other states and inconsistent with the FCC's Reconsideration Order. AT&T wants the Commission to reject SBC's language that would allow SBC to deem line splitting as a new combination and would refuse or charge exorbitant BFR rates to provide this service to AT&T.

Staff recommends the adoption of SBC's proposed language for Section 9.3.3.1 and 9.3.3.1.1 because it properly distinguishes between pre-existing UNE Combinations and new combinations in terms of applicable charges. Staff points out that the difference is important because SBC is allowed only a conversion charge for pre-existing combinations but is permitted to impose additional non-recurring charges for new combinations since it requires physical work.

We agree with Staff and SBC that the language as proposed by SBC is acceptable. The language of Section 9.3.3.1 is similar to the meaning of "pre-existing combinations" as contained in the Company's tariff filed in compliance with the Order in Docket 01-0614. This definition is also consistent with other agreed upon terms contained in this Agreement. SBC's proposal for 9.3.3.1.2 should also be included in this Agreement. This language in consistent with the terms and conditions of the Supplemental Order Clarification providing that reconfigurations of existing qualifying special access services to combinations of loop and dedicated transport are not to be considered a new UNE combination.

UNE Issue 14

Whether the ICA should include language stating that SBC may reserve the right to incorporate subsequent regulatory, judicial or legislative orders that address UNEs, in addition to the chage of law provisions covered in Article 29, section 29.4?

AT&T's Position

AT&T recommends that SBC's proposed language for Section 9.3.3.2 be rejected for several reasons. First, AT&T contends that SBC's interpretation of the Verizon decision and the requirements of FCC Rule 315 are facially invalid and unlawful. The Verizon decision simply reinstated FCC Rule 315(c); it did not create or clarify any new rules or distinctions. Based on SBC's interpretation of the Verizon decision, SBC proposes language to the effect that any subsequent regulatory, judicial or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of its UNE combining obligations become effective immediately without complying with or adhering to the change of law provisions of the parties' ICA. In the more than seven years since TA96 was enacted, rarely if ever have SBC and the Illinois CLECs, including AT&T, agreed upon what impact, if any, various legislative, judicial and regulatory mandates have had on SBC's unbundling obligations. There is no legitimate reason, legal, policy or otherwise, to allow SBC to unilaterally determine that (or when) a regulatory, judicial or legislative action is of such a nature that it ought immediately impact SBC's unbundling and combining obligations contained in its ICAs; any changes of law should appropriately be resolved via the ICA's change of law provision. This provision is intended to be used – and should be used – for any and all changes in law that impact the parties' ICA. It is inappropriate and arbitrary to single out changes of law regarding combining obligations in the first instance, while all other changes of law are subject to the provisions of the ICA. It is equally, if not more, inappropriate to allow any future, speculative, unidentified potential judicial, legislative or regulatory impacts on combining obligations to become effective immediately, sight unseen, at the unilateral discretion of SBC, the monopoly provider of UNEs.

SBC's Position

SBC's proposed language accurately acknowledges that the Supreme Court's Verizon decision made a distinction between the ILEC's "duty to 'perform the functions necessary to combine,'" and "complet[ing] the actual combination," and appropriately provides for an immediate application of that finding when there is a further ruling or guidance on what constitutes "functions necessary to combine" as opposed to work required to "complete the actual combination."

Commission Analysis and Conclusion

UNE Issue 14 is closely related to UNE Issue 10. AT&T proposes no language for UNE Issue 14, but opposes SBC's proposed provisions. SBC's proposed Section 9.3.3.2 would have the parties acknowledge the distinction contained in *Verizon v FCC* between a requirement that SBC perform functions necessary to combine UNEs (and to combine UNEs with a requesting carrier's network elements) and a requirement to complete the actual combination. It further would recognize that further guidance concerning this distinction, as well as what constitutes "functions necessary to combine" as opposed to functions necessary to "complete the actual combination" has not been provided as of the effective date of this Agreement. Finally, in light of these facts, Section 9.3.3.2 would maintain, at least for the moment, the status quo with respect to SBC's obligations to combine network elements for AT&T (subject to the provisions of SBC's proposed Sections 9.3.3.2.1 through 9.3.3.2.3).

We find that SBC's proposed Section 9.3.3.2, standing on its own, is appropriate for inclusion in the Agreement, and we direct that it be adopted, with deletion of the final phrase that would render this Section subject to the provisions of SBC's proposed Sections 9.3.3.2.1 through 9.3.3.2.3. Section 9.3.3.2, thus amended, accurately reflects the current state of affairs concerning the import of *Verizon v FCC* on SBC's obligations to combine elements under federal law. It also articulates an appropriate rationale for SBC to continue to complete the actual physical combination of UNE combinations under federal law, at least until further guidance concerning such obligations is forthcoming.

SBC's proposed Section 9.3.3.2.1 sets forth fairly conventional "reservation of rights" language. In this case, the language is directed to SBC's rights to seek legal review or stay of any decision regarding combinations involving UNEs. SBC contends that, as such, AT&T should not find this provision objectionable, and SBC should be allowed the "comfort" of this language in the Agreement. We agree, with one modification. Since, as SBC contends, it is self-evident that SBC is not waiving any of the rights to which Section 9.3.3.2.1 refers, it also follows that neither is AT&T waiving any such rights. Accordingly, we direct the inclusion of Section 9.3.3.2.1 in the agreement, with every reference to "SBC Illinois" replaced with the phrase "either party to this agreement".

SBC's proposed Section 9.3.3.2.2 would relieve SBC of any UNE combining obligation immediately "upon the effective date of any regulatory, judicial or legislative action" which would so relieve SBC of such obligation. This provision would override, in this particular circumstance, operation of the general "change of law" provision of the agreement. AT&T's position is that if any such actions clarify or change what functions are or are not necessary for an ILEC to perform, SBC can invoke the change of law provision pursuant to this Agreement. AT&T states that if there were any purported removal of the obligations to actually complete UNE Combinations, this would be viewed as a significant change of law. It would likely change an industry practice before and after Verizon. AT&T feels that this language is unnecessary and ill-advised.

Based on the arguments of the parties, we do not find that the language proposed by SBC for Section 9.3.3.2.2 is necessary or appropriate for this Agreement. If there are significant changes or clarifications, both parties would have an opportunity to invoke the change of law proposals set forth by this Agreement. Accordingly, we reject the inclusion of SBC's proposed Section 9.3.3.2.2 into the terms of this Agreement.

UNE Issue 15

SBC Issue: Under what circumstances is a CLEC able to combine for itself?

AT&T Issue: Is SBC required to combine UNEs that are ordinarily combined?

AT&T's Position

SBC's position that AT&T is "deemed able to make a combination itself" if the UNEs are "available" to AT&T and AT&T is physically collocated is very similar to its proposal as to "preexisting" versus "new" combinations, and would similarly have the effect of limiting or avoiding its obligation to provide UNEs and UNE combinations. In such circumstances, SBC is ostensibly attempting to require AT&T to physically connect and combine the UNEs it purchases from SBC. To require that AT&T physically connect and combine the SBC-provided loop and switch in an AT&T collocation cage would substantially raise AT&T's costs, as well as needlessly increase the risk of service outages and other negative impacts on service quality that naturally occur when such functions are performed. There is no conceivable justification for such a requirement except to impose excessive costs on new entrants that will deter competition and make it more burdensome for AT&T to provide additional products over UNE-P. It would specifically affect AT&T's plans to provide DSL and voice services to the customer through a line splitting arrangement. Under the current procedure, AT&T has pre-wired cables extending from its collocation cage to the SBC MDF to establish a connection with the AT&T DSLAM for the provision of DSL service in conjunction with UNE-P. When AT&T wins a customer, SBC ties down the cable at the MDF to establish the DSL connection. This operation takes an extremely short amount of time and creates no appreciable service disruption. Under the SBC proposal, SBC will not tie down the cable; rather, SBC would simply deliver the stand-alone loop and port on a set date, with no effort to coordinate the cutover. Not only would such a procedure impose substantial costs on AT&T and service disruptions on AT&T's customers, it would be blatantly discriminatory. SBC uses the same type of pre-wired cables to establish the connection to its own DSL customers, and SBC technicians naturally will perform the coordinated tie-down for SBC's own customers. SBC's refusal to do so for AT&T would place AT&T at a substantial competitive disadvantage.

AT&T stated that SBC's proposal flies in the face of the clear and far-reaching Commission Orders to the contrary in Docket 98-0396 and Docket 01-0614 and a legislative mandate to the contrary in the form of Section 13-801 of the Illinois Act, all of which require SBC to provide AT&T with all network element combinations it "ordinarily combines" for itself, whether or not AT&T is collocated. SBC's proposal also conflicts

with the parties' agreed upon language in Section 9.3.1, which tracks – almost verbatim – the combinations language from the Commission's Order in Docket 01-0614 and does not restrict AT&T's right to those combinations in only those instances where it is not collocated; indeed, it could not. At best, then, SBC's proposal is unlawful and violates the clear legislative and regulatory mandates in Illinois. SBC's language should be rejected and AT&T's language clarifying that collocation is not required constitutes good public policy, is consistent with the Act and the Commission's Orders and should be adopted.

SBC's Position

The Supreme Court's order in Verizon Comm. Inc. was specific in stating that an ILEC is only obligated to combine when either the CLEC is (1) unable to combine for itself or (2) unaware that it needs to combine. It is SBC's position that a CLEC is able to combine for itself when it has the collocation method of access to do so. When a CLEC is collocated in an SBC Central Office (or has an adjacent collocation arrangement), that method of access allows the CLEC to perform the functions necessary to combine. Therefore, when AT&T is collocated, SBC is not obligated to perform the function of combining the UNEs per the obligations set out by Verizon Comm Inc.

Staff's Position

Staff recommends adoption of AT&T's proposed Sections 9.3.1.3.6, 9.3.1.3.7 and 9.3.2.2 because they are consistent with State law combination requirements.

Commission Analysis and Conclusion

The parties differ, to an extent, as to what is addressed in this issue. AT&T's issue deals with under what circumstance is a CLEC able to combine for itself. SBC's issue is whether SBC is required to combine UNEs that are ordinarily combined.

AT&T argues that SBC's position that AT&T is "deemed able to make a combination itself" if the UNEs are "available" to AT&T and AT&T is physically collocated would have the effect of limiting or avoiding its obligation to provide UNEs and UNE combinations. AT&T contends that this would substantially raise AT&T's costs, as well as needlessly increase the risk of service outages and other negative impacts on service quality that naturally occur when such functions are performed. Moreover, AT&T argues, it would impose excessive costs on new entrants that will deter competition and make it more burdensome for AT&T to provide additional products over UNE-P. AT&T notes that it would specifically affect its plans to provide DSL and voice services to the customer through a line splitting arrangement. This operation takes an extremely short amount of time for SBC Illinois to perform it, and creates no appreciable service disruption. For AT&T to perform the procedure, not only would it impose substantial costs on AT&T and service disruptions on AT&T's customers, it would be blatantly discriminatory. AT&T believes that SBC Illinois' refusal to do the same for AT&T would place AT&T at a substantial competitive disadvantage.

AT&T states that SBC's proposal challenges the Order in Docket 98-0396 and Docket 01-0614 and Section 13-801 of the Act, all of which require SBC Illinois to provide AT&T with all network element combinations it "ordinarily combines" for itself, whether or not AT&T is collocated. AT&T also argues that SBC's proposal also conflicts with the parties' agreed upon language in Section 9.3.1, which tracks – almost verbatim – the combinations language from the Commission's Order in Docket 01-0614 and does not restrict AT&T's right to those combinations in only those instances where it is not collocated.

SBC argues that the Supreme Court's order in *Verizon* specifically stated that an ILEC's obligation to combine requested elements only appears when either the CLEC is (1) unable to combine for itself or (2) unaware that it needs to combine. SBC believes that a CLEC can combine for itself when it has the collocation method of access to do so. When a CLEC is collocated in an SBC Central Office (or has an adjacent collocation arrangement), that method of access allows the CLEC to perform the functions necessary to combine.

Staff recommends adoption of AT&T's proposed 9.3.1.3.6, 9.3.1.3.7 and 9.3.2.2 because they are consistent with State law combination requirements and promulgated by the Commission in Docket No. 01-0614.

The parties in this issue are really not that far apart in resolving it. The language as proposed by AT&T seems to more accurately reflect the positions of the parties for 9.3.1.3.6 and 9.3.1.3.7.

The language of 9.3.2.2 is not to be included. The language of AT&T is too broad and the language proposed by SBC could be seen as requiring AT&T to combine for itself on UNE-P.

The language as proposed by SBC for 9.3.3.9.5.3 is consistent with the Verizon decision. Therefore, this language should be included.

The remainder of the language proposed by SBC is inconsistent with our conclusion of UNE Issue 14. Any implementation of the obligations clarified from the Verizon case would be dealt with in the change of law provision. The inclusion of this language would be premature at this time.

UNE Issue 17

SBC Issue: Should the Agreement state that SBC will follow OBF EMI guidelines rather than stating the specific detail that may be included in such guidelines, when such detail is subject to change by the OBF forum during the term of the Agreement?

AT&T Issue: Should the Agreement specify key elements of the OBF EMI guideline requirements related to SBC's obligations to provide records to AT&T when AT&T is relying on SBC to bill its end users?

AT&T's Position

This issue is essentially the same as Comprehensive Billing Issue 4a. AT&T stated that when operating as a UNE-based provider, AT&T is totally dependent on SBC to provide the detailed switch records that AT&T needs to bill the originating carriers and its own customers, as well as to verify what SBC charges AT&T. Thus, according to AT&T, SBC must be required to provide AT&T with specific call detail, including the Operating Company Number ("OCN") of the originating carrier. Because SBC should be required to provide this information, the ICA should set forth the elements of the Ordering and Billing Forum ("OBF") Exchange Message Interface ("EMI") guidelines on this requirement. AT&T proposed that the OCN will be identified in all EMI records effective in the first quarter of 2004, when SBC has indicated it should complete its ULS Port OCN project. Any records received without the originating OCN will be treated as though originated by SBC, and will be billed to SBC as though SBC were the originating carrier. SBC stated that the OCN information was available to AT&T through SBC's line information database ("LIDB"), but as AT&T demonstrated in connection with Comprehensive Billing Issues 3 and 4, this is unacceptable. Because the OCN information is not readily available to AT&T, SBC should include it in the EMI records at no charge to AT&T, as recommended by Staff witness Dr. Staranczak.

SBC's Position

This issue is nearly identical to Comprehensive Billing Issues 3 and 4.a and should be resolved the same way. AT&T's legitimate need to know the identity of the originating carrier can be satisfied by use of the ACNA information SBC provides, or can be otherwise obtained by AT&T, through LBID databases.

The Commission should not create a special requirement that forces SBC to provide the originating carrier number ("OCN"). SBC incorporates by reference its discussion on these points in Issues Comprehensive Billing 3 and 4.a. In addition, SBC notes its agreement with Staff's proposed language and is willing to provide billing records to AT&T in OBF EMI format and to retain those records for a period of one-year. AT&T's proposal, that specific OBF standards be incorporated in the contract, would prevent SBC from adjusting its billing as OBF guidelines are reviewed, updated and improved and would further prevent SBC from maintaining a uniform billing system.

Staff's Position

Staff recommends (1) that the Commission require SBC to provide the OCN information along with the EMI records at no charge to AT&T because SBC had not demonstrated that such information is otherwise available to AT&T; (2) reject AT&T's proposal for EMI records to be provided according to current industry standards rather than according to industry standards as they evolve over time; (3) reject AT&T's proposal to require SBC to maintain and provide records because AT&T's proposed

requirement is too vague and lacks detail; and (4) adopt language requiring SBC to maintain records for a period of one year.

Commission Analysis and Conclusion

This issue is similar to Comprehensive Billing 3 & 4a. It deals with providing the OCN information to AT&T so that it can bill properly. SBC asserts that the UNE should focus on access and should not be the place where critical billing issues are addressed. SBC is willing to agree with the modifications imposed by Staff to get this issue resolved.

AT&T is requesting even more information in getting this issue resolved. AT&T asserts that it is necessary to obtain the OCN or Originating Carrier Number with the EMI billing. AT&T also wants the billing standard to be under the current OBF EMI format. Finally, AT&T wants broader language compared to the language proposed by Staff and SBC.

It appears that AT&T's and SBC's language essentially state the same positions with minor changes. Staff had originally proposed "current industry standards" and this statement was opposed by SBC. It contends that if there is any upgrade in the OBF industry standards, then it will be unable to update its billing pursuant to the additional technology. In an effort to compromise this, AT&T has proposed eliminating the word "current" and just say, "pursuant to industry standards". This appears to satisfy all the parties and resolve this issue.

Therefore the language for this issue should read as follows:

> In accordance with Section 9.2.2.4.4 of Section 9.2.7 "inter-office transmission facilities" and 27.14.4 of Article 27 "comprehensive billing", SBC will provide the records to AT&T in an OBF EMI format and retain these records for one year. The OCN will be included in the EMI records according to industry standards.

UNE Issue 18a

AT&T Issue: Should AT&T and its HBSS be Required to on the Same Local Service Ordering Guidelines ("LSOG") Version?

SBC Issue: Is SBC Obligated to Modify its OSS to Accommodate AT&T and its Third Party Agent in their Inter-CLEC Communication to Enable the HBSS to Place Orders on AT&T's Behalf for Line Splitting?

AT&T's Position

AT&T proposed language that would not require it and its partnering High Bandwidth Service Supplier ("HBSS") to be on the same LSOG version. Conversely, SBC wants to enforce a policy of requiring the HBSS to utilize the same LSOG version

as AT&T for placing orders. AT&T stated that SBC's proposal is unacceptable because it would require that AT&T and its HBSS partner remain synchronized on the same LSOG version for the duration of their relationship. AT&T stated that SBC's proposal has three main problems: it would deny AT&T and its HBSS partner non-discriminatory access to SBC's OSS, it would make line-splitting partnerships between AT&T and a data CLEC difficult, and it would be anti-competitive. AT&T stated that at a time when customers increasingly purchase voice and data service from the same source, enforcement of SBC's "same version" policy will foreclose AT&T's ability to complete meaningfully in this marketplace.

AT&T stated that SBC's "same version" proposal creates problems for the HBSS, and restricts an HBSS's ability to support multiple partnerships with voice CLECs. For example, if an HBSS is in partnership with AT&T and another voice CLEC, all three parties would be required to be on the same LSOG version at all times, meaning that none of the parties could move to a new LSOG version unless all three moved at the exact same time. Moreover, SBC's proposal is made worse by SBC's restrictions on the availability of trading partner ID's ("TPID"), which limits AT&T's ability to participate in line-splitting arrangements. Although SBC has suggested that AT&T could allow its HBSS to use one of AT&T's TPIDs, AT&T already uses its three TPIDs for other purposes, and SBC has not responded to AT&T's requests for additional TPIDs.

AT&T stated that SBC's proposal is discriminatory and anti-competitive because it does not apply to SBC or any HBSS with which SBC may partner. The "same version" policy does not apply to SBC's data affiliate or to a data CLEC providing service in partnership with SBC. SBC's "same version" policies ensure that it can provide services to retail customers that AT&T is prevented from servicing without expending large amounts of time and money.

AT&T stated that the alternatives of submitting line splitting orders manually (i.e., via facsimile) or via the web-based Graphical User Interface ("GUI") are less efficient and more manually intensive than EDI, and do not permit efficient integration and coordination of activities between AT&T and the HBSS, particularly under high-volume conditions. AT&T reiterated that SBC's retail operation and its data affiliate, or an HBSS with which SBC might partner, are not subject to the "same version" policy and thus are not required to use manual ordering methods or the GUI.

AT&T stated that Staff witness Dr. Staranczak's recommendation on this issue is unacceptable. Dr. Staranczak's recommendation does not account for the anti-competitive and discriminatory effects of SBC's policies and, as a result, would effectively eliminate line-splitting as a means of competition with SBC in providing combined voice and data services. AT&T also stated that in any event, because SBC has not offered to make the necessary OSS modifications, Dr. Staranczak's recommendation is moot and should not be adopted.

SBC's Position

AT&T requests that SBC make fundamental changes to its Operations Support Systems ("OSS"). This Commission recently found in the 271 proceeding (Docket 01-0662) that SBC's OSS are made available to CLECs on a nondiscriminatory basis. Therefore, AT&T's claim – which is based on the notion that it does not have nondiscriminatory access to OSS -- is foreclosed as a legal matter. Beyond that, AT&T and Covad have available to them several alternatives to achieve the seamless type of ordering they seek. It should be up to AT&T and Covad to invest the time and resources necessary to perfect their joint ordering processes. That job should not be given to SBC. This is especially true since AT&T's desire to partner with Covad may easily change tomorrow, next week or next month. Finally, it is inappropriate to arbitrate such a request in a two-party proceeding when there are established industry processes that address issues of this type. This is not merely a procedural point; all CLECs in the 5-state SBC Midwest area operate on a single OSS and any change to the OSS can have significant impacts on all of them. Moreover, the OSS is constantly evolving and improving and it is the CLEC industry as a whole that gives its input on the prioritization of improvements – a single CLEC should not be able to end-run that process.

Staff's Position

Staff recommends SBC's proposed language be adopted if AT&T is unwilling to pay OSS modification costs. Alternatively, if AT&T proposes to pay OSS modification costs, then Staff recommends adoption of AT&T's proposed language for Section 9.2.2.5.1 with certain modifications.

Commission Analysis and Conclusion

This issue deals with whether or not AT&T and a HBSS must use the same versions of LSOG when sending EDI orders for line splitting, as proposed by SBC, when they have entered into a partnership to jointly supply data and voice services. AT&T indicates that if it is required to use the same version of LSOG it will place an unfair restriction on its ability to offer this service to its customers. AT&T also argues that SBC does not charge its HBSS partners for this service if its orders are entered in different versions of LSOG.

SBC argues that this versioning has nothing to do with harming other CLECs. SBC states that if an order is placed using LSOG version 4 then the record will be returned by SBC using LSOG version 4. If AT&T is using LSOG version 5.02 then it may not make sense of the record. SBC asserts that it not its responsibility to transcribe an order into different versions. SBC has also offered other alternatives to AT&T when placing these types of orders. For various reasons AT&T is not agreeable to any of the other versions that are recommended by SBC to resolve this issue.

If AT&T is willing to pay for the OSS modification costs, then Staff would recommend adopting AT&T's proposed language with certain modifications. Staff

considers it unreasonable for SBC to absorb the cost of business decisions that AT&T makes with its data suppliers. If there is manual work involved in performing this service, then SBC should be entitled to compensation for said service.

Based on the above, we do not find that it is reasonable for SBC to have to provide different versions of the LSOG system to AT&T and its partners. Staff had proposed that if AT&T were willing to absorb the modification costs that this would be a satisfactory alternative for all. AT&T in its response did not acknowledge or agree with this proposal of Staff. It appears that AT&T maintains that SBC should provide this service to AT&T without charge. We do not agree with AT&T on this position and we adopt the language as proposed by SBC to resolve this issue.

The language for this Section is as follows:

> 9.2.2.5.1: Use of High Bandwidth Services Suppliers. AT&T may identify one or more CLECs as an authorized High Bandwidth Service Supplier ("HBSS") authorized by AT&T to add, change or delete High Bandwidth Services capabilities on an xDSL-capable Loop employed or ordered by AT&T. If AT&T chooses to utilize HBSSs under this section, the orders issued by HBSS must appear, in all ways, as if the orders were submitted by AT&T. For orders submitted under this Schedule 9.2.2, SBC will treat the orders in exactly the same manner as if AT&T, and not a third party, submitted the order.

UNE Issue 19

Whether the DSL/PSD parameter or Proof of continuity parameter test is appropriate to assess the loop DSL qualifications.

UNE Issue 21

Should the basic metallic loop parameters of the specific loop parameters associated with the loop be verified during cooperative testing?

UNE Issue 22

Should SBC be required to guarantee the loop provided to AT&T performs as specified by AT&T? Should SBC be required to guarantee local loops will perform as ordered by AT&T beyond basic metallic loop parameters?

AT&T's Position

In UNE Issues 19, 21, and 22, AT&T requests that SBC test the xDSL loop it provides to ensure that it provisions AT&T with a particular product, an xDSL loop, consistent with specific industry standards from which AT&T orders such loops. SBC refuses, arguing that it need only test an xDSL loop to ensure "connectivity," meaning that there is a live line that extends from the central office to the customer's premise.

According to AT&T, connectivity is not enough. AT&T argues that SBC should ensure that the xDSL loop it provisions meets the parameters of the xDSL loop AT&T orders, consistent with specific industry standards and SBC's own loop qualification data. As AT&T witness Mr. Noorani testified, there is no reason for SBC not to agree to language specifying that it will provide these specific technical parameters, of which SBC is well aware.

AT&T's proposed language provides that the loop must pass the "PSD mask" parameters. PSD is an acronym for Power Spectral Density, which is defined by the FCC as "graphical templates that define the limits on signal power densities across a range of frequencies so as to minimize interference." As SBC witness Mr. Odle explains, PSD masks correspond to nine spectrum management classes defining the type of DSL technology on an xDSL loop. SBC further concedes that the PSD Mask industry parameters have been set by the T1E1 Committee (a working group of Alliance for Telecommunications Industry Solutions ("ATIA") – a sponsored committee, which is accredited by the American National Standards Institute ("ANSI')). Moreover, SBC ignores the fact that the FCC, in both its Advanced Services Order and Line Sharing Order, has specifically deferred to these industry standard bodies for the development of DSL standards, subject to NRIC and FCC supervision. In fact, pursuant to the parties' agreed language, when ordering xDSL service, AT&T must "at the time of ordering, notify SBC-AMERITCH as to the Power Spectral Density (PSD) mask of the technology AT&T will employ." Schedule 9.2.2, Section 9.2.2.8.1. Thus, AT&T is asking that SBC test the loop to ensure it meets the industry-standard parameters which AT&T designates in its order, and which SBC requires AT&T to meet. SBC's loop qualification database provides AT&T the information it needs to determine what spectrum class of service it can place over a particular loop and, based on that information, AT&T decides what type of DSL service and PSD mask it can provide over the loop (e.g., ADSL, SDSL, ISDL). It is therefore reasonable, AT&T opines, for it to expect SBC to test that the loop provisioned meets the parameters that its loop qualification database indicates can be attained on a particular loop. Accordingly, the Commission should adopt AT&T's proposed language relating to UNE Issues 19, 21, and 22.

AT&T makes no new arguments in its Reply Brief.

SBC's Position

According to SBC, AT&T's language would make SBC responsible for providing a DSL service – not merely for providing the basic copper loop. Since SBC has no role in provisioning DSL service (that is exclusively AT&T's service), AT&T's proposal is unreasonable on its face. AT&T's proposal should also be rejected because SBC has no control over the critical characteristics of the local loop that impact the performance of the DSL service. These include, but are not limited to, loop length, loop gauge, loop conditioning and the type of DSL equipment employed by AT&T. All of these factors impact the line bit rate (data transfer speed) and other performance characteristics of DSL service (referred to as "DSL/PSD mask" by AT&T) and are exclusively within the

control of AT&T. In fact, SBC argues that through the loop qualification process, AT&T knows in advance the loop characteristics, such as loop length and loop gauge and has relevant information to determine whether or not a particular loop will support the DSL service it wants to provide. Based on these facts, it is commercially unreasonable to allow AT&T to reject a loop – and thereby avoid any charges for a loop – simply because it turns out not to meet its needs. In this situation, SBC has provisioned a loop pursuant to the express instructions of AT&T and is fully entitled to be compensated for its activities. Finally, AT&T's language would require SBC to "perform work necessary to correct the situation" if a particular loop ordered by AT&T turns out not to support AT&T's desired xDSL service. This is technically infeasible, according to SBC.

The more reasonable and commercially appropriate solution is that SBC be responsible for providing a "good" copper loop, i.e., one that is free of defects, tested, and guaranteed for continuity. SBC's proposed language does just that and should be adopted by the Commission.

The issue presented in UNE 22 is whether the following SBC language should be included in the contract:

> 9.2.2.14.7 SBC-Ameritech will not guarantee that the local loop(s) ordered will perform as desired by AT&T for xDSL-based or other advanced services, but will guarantee basic metallic loop parameters, including continuity. AT&T-requested tested by SBC-Ameritech beyond these parameters will be billed on time and material basis as set forth in the tariff rates listed above.

This language would do three things: 1) include a guarantee by SBC that xDSL-capable loops will meet basic metallic loop parameters, including continuity; 2) disclaim any guarantee that loops will support any particular form of xDSL or other advanced services; and 3) make clear that any special testing requested by AT&T will be billed on a time and material basis at tariff-approved rates. AT&T has no proposed language on these topics.

Each aspect of this provision should be approved. First, SBC's guarantee that loops will meet basic metallic loop parameters, including continuity, is unobjectionable. Neither Staff nor AT&T complains about this guarantee.

Second, as for the disclaimer language, AT&T can hardly object to that because it is identical to language it has already agreed to in schedule 9.2.2, section 9.2.2.12.1. This agreed-to language provides that "SBC Ameritech will not guarantee that the local loop(s) ordered will perform as desired by AT&T for xDSL-based, HFPL, or other advanced services…." Moreover, for all the reasons explained in the brief for UNE issues 19 and 21, SBC cannot guarantee that a loop will perform as desired for DSL service because the factors that determine this (e.g., loop length, line conditioning and DSLAM equipment) are under AT&T's control, not SBC's.

Third, as for the payment language, there is nothing controversial about that. If AT&T orders services above and beyond the normal testing provided for in the Agreement, it should pay for those services at tariffed rates. That is already expressly set out with respect to repair services in section 9.2.2.14.4.1. There, the Agreement explains that if AT&T opens a trouble ticket and the problem is determined to be in AT&T's network, AT&T will "pay SBC-Ameritech the applicable Commission-ordered tariff rate for trouble isolation…maintenance and repair upon closing the trouble ticket". The result should be no different if AT&T orders additional testing above and beyond that provided for in the Agreement.

For these reasons, SBC recommends that its proposed language for UNE Issue 22 be adopted.

Staff's Position

Staff takes no position on this issue.

Commission Analysis and Conclusion

UNE Issues 19, 21 and 22 revolve around who is responsible for determining the type of x-DSL service that can be supported by a loop. The answer to that question determines which party must pay for testing and any work that must be done in order to offer a certain type of x-DSL.

Notably, AT&T does not discuss the cost to perform the testing it requests or to perform the work that could be needed to meet a specific "PSD mask" parameter.

AT&T has also not shown that it is SBC's responsibility to provide this test. We find no support in the FCC Orders for AT&T's position. The FCC language cited by AT&T merely lays out the FCC's support for standards set through independent third parties, not that SBC is required to guarantee loops to meet certain standards. Although these orders address the need for industry standards, they do not require that an ILEC must provision a loop for a CLEC that meets the standards.

Moreover, AT&T has not shown that SBC has control over whether a loop can support a certain kind of DSL. Specifically, whether PSD mask parameters are met is dependent, among other things, on what type of DSLAM equipment AT&T uses.

AT&T argues that because it must identify the PSD mask when it places an order, SBC should guarantee that the loop will support that PSD mask. SBC, in its Reply Brief, explains why a CLEC must identify the PSD mask at the time it orders a basic copper loop. SBC asserts that it must gather this information as part of its obligation to manage spectrum. SBC is obligated to disclose this information at the request of any CLEC, so that CLEC can determine what services and technologies it can deploy within the SBC's territory.

Accordingly, we adopt SBC's language for Schedule 9.2.2.12.1.1, 9.2.2.12.1.2, 9.2.2.13.2.1.3, 9.2.2.13.2.1.4, 9.2.2.13.2.3.2, 9.2.2.13.2.3, 9.2.2.14.7.

UNE Issue 20

What language should apply to situations where the SBC personnel are on hold for 10 minutes in acceptance testing and cooperative testing situations?

AT&T's Position

In those instances when SBC cannot reach an AT&T technician within 10 minutes of the test interval, AT&T proposes that the order be placed in Customer Not Ready ("CNR") status, the same way SBC does it today throughout its 13 state region. The Commission should reject SBC's proposal to "close the order" and "bill AT&T as if the Acceptance Test had been completed and the loop accepted," even in those cases where the loop is not, in fact, acceptable. The correct (and current) procedure puts the order in CNR and it is AT&T's responsibility to send a Supplemental Order ("Supp") to SBC and request a new acceptance or cooperative testing interval. The AT&T proposed language reflects this process. Under SBC's proposed process, the SBC technician makes one attempt and if unable to reach the AT&T technician, closes out the order and assumes that the loop has passed acceptance testing, despite the fact that no testing has occurred. This process assumes that only AT&T technicians are responsible for delays when in reality a delay could be caused at either end. AT&T and SBC have worked together to refine and resolve this process in a business to business negotiation over the course of several years. For SBC to summarily discard a process that the parties have developed over a number of years is simply outlandish. SBC's proposed new procedure will delay ordering processes and increase AT&T's ordering costs by forcing AT&T to issue a new order (rather than a supplemental order) just to complete testing the loop. SBC would not turn up a customer on a loop without testing it first and should not expect AT&T to do so either. AT&T stated that SBC's proposal should be rejected and the status quo should be maintained.

SBC's Position

According to SBC, once it completes the installation and testing of a DSL-capable loop, the field technician is ready to turn the loop over to the CLEC and leave the job site. Many CLECs, however, want to perform their own acceptance test on the loop and they need the services of a field technician to do so. Rather than dispatch their own technician, they use the SBC technician because he or she is already at the job site. SBC agrees to make good faith efforts to contact the CLEC for 10 minutes, but if the CLEC cannot be reached, the SBC technician moves on to the next job.

The question presented is whether SBC must, free of charge, return to the job site to assist AT&T with its testing. SBC is willing to provide this service, but only at its standard, tariffed rates for field dispatch services. AT&T insists that this service be provided for free. More specifically, AT&T asks that the situation be treated under the

"customer not ready" or "CNR" process – which has the same effect of requiring SBC to do it for free.

According to SBC, AT&T's position should be rejected for three reasons. First, AT&T wants something for nothing; namely it wants SBC to incur the cost of an extra dispatch without the ability to charge for it. Second, SBC developed an industry-wide process for acceptance testing in 2000 based on collaboration and negotiations with the data CLEC industry. AT&T's proposal is inconsistent with that industry-approved process. Finally AT&T's proposal would force SBC to create and maintain two separate procedures for acceptance testing – a situation which is certain to lead to confusion, errors, and unnecessary duplication of effort.

Staff's Position

Staff takes no position on this issue.

Commission Analysis and Conclusion

We agree that SBC's approach is reasonable. As noted by SBC, if a trouble ticket is opened on the loop within 24 hours and the trouble resulted from an SBC error, AT&T will be credited for the cost of the Acceptance test. AT&T may also have SBC re-perform the Acceptance test at the conclusion of the repair phase at no charge. Thus, we agree with SBC that AT&T has safeguards built in should the order be closed on a problem loop without an AT&T acceptance test.

There are discrepancies in the parties' explanation of the CNR process. AT&T argues that it has always used the CNR for the situation at hand where the UNE is installed, but no cooperative testing is performed, whereas SBC contends that the CNR is only used in situation where the UNE is never installed in the first place because the customer is not ready. Regardless of what the parties' current practice may be, common sense dictates that AT&T should be responsible for the costs incurred by SBC when it must dispatch a technician a second time because AT&T was not available the first time.

Under AT&T's proposal, an SBC technician must wait on the line for 10 minutes waiting for AT&T to provide a representative and if AT&T fails to do this, then the technician must return to give AT&T yet another opportunity to perform the cooperative testing. SBC is not reimbursed for the second trip under AT&T proposal. We find this request to be unreasonable.

Accordingly, we adopt SBC's language for Schedules 9.2.2.13.2.1.6 and 9.2.2.13.2.3.3.

UNE Issue 23

Should AT&T be allowed to commingle local and toll OS/DA traffic on existing FG D trunks?

UNE Issue 24a

Should SBC be required to deploy custom routing for AT&T based on AT&T's proposed schedule or must AT&T order customer routing via the BFR process?

UNE Issue 24b

In what manner should SBC be required to provide customized routing associated with UNEs?

AT&T's Position

AT&T proposes that SBC allow AT&T to commingle local and toll OS and/or DA traffic on AT&T's existing OS and/or Feature Group D trunks. By refusing to agree to commingle OS and DA traffic for local and toll traffic on the same trunks, SBC is insisting that AT&T establish new OS and DA trunks that would duplicate or replicate its existing OS and DA trunks used for its toll traffic. As AT&T witness Mr. Noorani pointed out, there is no technical reason why AT&T would need to go through the time and expense of installing totally new trunking for additional traffic types. AT&T Ex. 6.0, p. 79. The only reason for SBC's proposal is to require AT&T to install inefficient (duplicative) trunking arrangements and to incur unnecessary cost and expense. Nor is AT&T's request technically infeasible. In fact, SBC Indiana has been obligated for over two years to provide AT&T with the ability to commingle OS and DA traffic using, in part, Feature Group D trunks. IURC Cause No. 40571-INT-03, Order dated November 20, 2000, Issue 24 and accompanying contract language. Specifically, SBC Indiana "shall allow AT&T to commingle local and toll OS and/or DA traffic on existing OS and/or Feature Group D trunks." There is no legitimate reason why SBC cannot afford the same custom routing options to AT&T and TCG in Illinois. Accordingly, AT&T's proposed language should be adopted.

In Section 9.2.6.1.7.2, AT&T proposes language requiring SBC to provide custom routing according to various schedules and time frames. SBC's suggested BFR process is inappropriate. A BFR is used when something is novel (i.e., provided for the first time) or unique (e.g., a carrier requests it to satisfy the extraordinary requirements of one of its customers). Custom routing is neither. It is undisputed by both parties that SBC is required to provide custom routing for AT&T. Second, custom routing is not a feature unique to AT&T; in fact, many CLECs use it. Moreover, desires specific provisioning parameters for custom routing so it is able to know, with a reasonable degree of certainty, when its orders will be provisioned so that it can conduct its business operations accordingly. SBC should have no difficulty adhering to AT&T's proposed timeframes since the same implementation schedule was proposed by SBC's

own parent company and was implemented in California. (AT&T Ex. 6.0, p. 79.) Accordingly, AT&T's proposed language should be adopted for UNE Issue 24(a).

AT&T's proposed Section 9.2.6.2.2 is taken verbatim from the language adopted by the Indiana Utility Regulatory Commission (and is, in fact, also 9.2.6.2.2 of the parties' Indiana interconnection agreement) in its Order dated November 20, 2000 in IURC Cause No. 40571-INT-03, discussed above in conjunction with Issue 23 above. Accordingly, AT&T's proposed language should be adopted.

SBC's Position

When AT&T purchases a UNE platform from SBC, it may, at its option, request a feature known as "custom routing" which will route "0" dialed calls to an AT&T operator. SBC provides two forms of custom routing today, and AT&T demands that SBC develop a third type called "custom routing over Feature Group D". Issues 23, 24.a and 24.b involve slight different aspects of this dispute, so SBC deals with them together.

For Issue 23, AT&T proposes language that would require SBC to immediately provide custom routing over Feature Group D. This should be rejected for three reasons. First, the proposal is technically infeasible because current technology does not support it. Second, this Commission recently ruled in the Section 271 proceeding (Docket 01-0662) that SBC has no obligation to provide custom routing over Feature Group D. Third, AT&T has already agreed that it will use the BFR process to pursue custom routing over Feature Group D. See section 9.2.6.1.7. The BFR process is the appropriate mechanism to investigate the technical feasibility and expense of this proposal, and to allocate that expense to AT&T.

In Issue 24, SBC seeks confirmation that the BFR process should be used to assess AT&T's request for custom routing over Feature Group D. First, this proposal is not technically feasible now and even if technology could be developed by switch vendors to support it, the cost of such a massive conversion would be high. The BFR process establishes the framework within which the technical evaluation can take place and will clearly assign the costs to AT&T. In the BellSouth Louisiana 271 proceeding, the FCC ruled that a BFR-type process is the appropriate mechanism through which additional features of this nature should be investigated. And the BFR produces a fair outcome. Without it, SBC would be required to spend a great deal of time, effort and money to investigate and develop a new capability that may ultimately be impossible to deploy. Without the BFR process, SBC would be stuck with huge expenses with no assurance of recovery.

Staff's Position

Staff takes no position on this issue.

Commission Analysis and Conclusion

There are two issues here, but the parties have treated them together and so will we. The first issue involves custom routing of OS/DA calls. SBC currently offers custom routing via line class codes and AIN and the issue is whether it must also provide custom routing over Feature Group D. The second issue is, when AT&T requests custom routing, should there be a standardized process in place or should the BFR process be utilized each time.

SBC provided testimony that custom routing over Feature Group D is not currently offered in Illinois and, in fact, is not technically feasible. SBC proposes, however, that if AT&T wants this functionality it can request it through the BFR, because it would be a new feature. Given that SBC does not currently over this functionality, we agree that the BFR process is appropriate to develop and price a new SBC offering. Through that process, technically feasible, technical specifics, as well the costs involved, can be thoroughly examined and determined.

We note that SBC relies on the Section 271 Order to support its position of technical infeasibility. The Commission found that Worldcom had not shown that custom routing over Feature Group D was technically feasible. Now in this proceeding, AT&T similarly argues that SBC should offer this because it is technically feasible. The problem, however, is that AT&T has not provided any support for this assertion. We agree with AT&T that Section 271 proceeding had a limited purpose and, in fact, it is of very limited use as precedent for purposes of this proceeding. Nevertheless, the showing made by AT&T in this proceeding is even less than that made by Worldcom in the Section 271 proceeding.

For those instances where AT&T requests custom routing over functionalities that SBC currently supports, for instance Feature Group C and AIN, SBC also insists that it be done through the BFR process and not in the specific timeframes proposed by AT&T.

SBC's main opposition to the AT&T timeframes seems to rest on its opposition to offering custom routing over Feature Group D. We agree that this option should be requested through the BFR process, but SBC has not shown that other requests for custom routing are similarly new or novel. Requests for custom routing other than over Feature Group D will not be subject to the BFR process.

Accordingly, we adopt SBC's proposed language for Schedule 9.2.6, Section 9.2.6.1.7. For Schedule 9.2.6, Section 9.2.6.1.7.2, we adopt AT&T's language.

AT&T's proposed language for Schedule 9.2.6.2.2 is not supported by any testimony. Rather, AT&T references an Indiana decision as support for its position. The applicability of that decision to the facts of this arbitration has not been established, let alone a wholesale adoption of the terms of that agreement without further support or explanation. Accordingly, AT&T's proposed language for Schedule 9.2.6, Section 9.2.6.2.2 will not be included.

UNE Issue 27

Should the reciprocal compensation terms and conditions contained in Article 21 apply to ULS-ST reciprocal compensation?

See our discussion of this issue under Intercarrier Compensation Issue 1.

UNE Issue 28

Should SBC-Ameritech be required to provide to AT&T the OCN of 3rd party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC-Ameritech?

AT&T's Position

This issue is essentially the same as Comprehensive Billing Issue 4, and is similar to UNE Issue 17, in that it involves whether SBC should be required to provide AT&T the Operating Company Number ("OCN") of the originating carrier of calls terminated by AT&T when using unbundled local switching leased from SBC. AT&T stated that SBC has this information, and should provide it to AT&T so that AT&T can correctly bill the originating carrier for the call. Further, AT&T stated that, for the reasons it presented with respect to Comprehensive Billing Issues 3 and 4, SBC's proposed alternatives, including requiring AT&T to look up the OCN itself in the Line Information Data Base and the implementation of the SBC ULS Port OCN project, are either unsatisfactory or incomplete solutions for AT&T's need for originating carrier OCN information from SBC when AT&T is using SBC's unbundled local switching. It is AT&T's position that if SBC does not provide the originating carrier OCN information to AT&T, SBC should be treated as the originating carrier and be billed by AT&T for the termination. At that point, SBC can seek reimbursement or compensation from the true originating carrier. AT&T recommends that its proposed language be adopted.

SBC's Position

For the most part, the disputed language that is the subject of this issue is the same as the disputed language that is the subject of Comprehensive Billing Issue 4.a. To that extent, this issue should be resolved in favor of SBC for the same reasons as that one. The one SBC-proposed sentence that is part of this issue and that is not part of Comprehensive Billing Issue 4.a is plainly reasonable and should be included in the Agreement.

Staff's Position

Staff took no position on this issue.

Commission Analysis and Conclusion

This issue is identical to that presented in Comprehensive Billing Issue 4 and is discussed below.

UNE Issue 29

How should reciprocal compensation rate elements be structured?

See our discussion under Intercarrier Compensation Issue 1.

UNE Issue 30

Should Ameritech be required to administer LIDB information provided by AT&T?

UNE Issue 33

Should the LIDB-AS schedule be part of the interconnection agreement?

AT&T's Position

AT&T contends that its proposed language tracks SBC's currently existing LIDB process, which requires AT&T to indicate LIDB updates on the Local Service Request and then SBC implements the update. SBC, according to AT&T, insists that it does not administer the LIDB database for AT&T and that it provides AT&T an interface to administer AT&T's own LIDB information. AT&T argues that SBC's statement of position would lead one to mistakenly believe that AT&T can physically go into SBC's database and perform its own updates to the AT&T information stored in this database. To the contrary, AT&T submits any additions, changes or deletions to SBC, and SBC inputs the data provided by AT&T into the SBC LIDB database. SBC's position is also contrary to the language it proposed – and which was adopted – in its Missouri arbitration with MCI, in which SBC acknowledges that it inputs and administers CLEC data into the LIDB database using the LSR process.

The negotiated language contained in Schedule 9.2.8 of the ICA covers both parties adequately for AT&T's use of the SBC LIDB database. SBC, on the other hand, would like to force AT&T to use SBC's generic LIDB-AS schedule. SBC's proposed schedule is too vague in some places and too restrictive in others. AT&T has contractually agreed to LIDB database access via the terms and conditions contained in Schedule 9.2.8 and has no need for the additional "protections" and restrictions SBC seeks to unilaterally impose via the LIDB-AS schedule.

SBC's Position

SBC's proposed LIDB-AS Appendix provides the necessary terms and conditions for administration of the LIDB data. AT&T's proposed language, on the other hand, is wholly inadequate.

The Agreement should set forth in detail the terms, conditions, and responsibilities of the parties with respect to LIDB. The LIDB-AS Appendix proposed by SBC sets forth the interface options available to AT&T and appropriately addresses the responsibilities of both parties regarding the administration of AT&T's end user information. AT&T's proposed language, on the other hand, does not go far enough in defining a working business relationship with respect to LIDB. Specifically, AT&T's language is lacking in the following areas: (1) administration of AT&T's LIDB records for its switch-based end users; (2) ability to request emergency updates; (3) audits; and (4) data migration. AT&T has not provided any reason why it objects to SBC's proposed LIDB-AS Appendix.

Staff's Position

Staff takes no position on this issue.

Commission Analysis and Conclusion

LIDB is a database in which local exchange carriers store comprehensive and proprietary information about their end-users' accounts. LIDB enables carriers to determine, at the time of call processing, whether the end user has decided in advance to accept alternately billed calls, i.e., collect, third party number and calling card. LIDB is connected directly to a Service Management System ("SMS") and a database editor that provides the capability of creating, modifying, changing, or deleting line records in LIDB. SBC offers CLECs three methods of accessing the SMS, depending on how the local service is provided: 1) Local Service Request ("LSR"); 2) Interactive Interface; or 3) Service Order Entry Interface. When AT&T provides local service via SBC's UNE, the LSR method applies.

SBC proposes that these activities be governed by the LIDB-AS Appendix. AT&T, on the other hand, argues that its proposed language for Schedule 9.2.8.19.1 is sufficient.

We note that SBC does not dispute that AT&T only uses SBC as a LIDB database provider when AT&T uses SBC's unbundled local switch ports. AT&T does not use SBC as a third party LIDB provider in those instances where AT&T is a facilities based provider. We agree with AT&T that the ICA should not contain terms for a service that AT&T does not currently utilize and may not ever utilize.

AT&T criticizes the LIDB-AS Appendix for being both overly restrictive and at the same time too vague, yet fails itself to explain these assertions. To the contrary,

however, we find, AT&T's language to be too vague. AT&T's language does not limit itself to when AT&T uses SBC's unbundled local switch ports, but rather says "AT&T accounts administered by SBC". Unfortunately, AT&T dismisses the entire Appendix rather than specifying which parts should apply.

Although we agree with SBC that the specific terms contained in the LIDB-AS Appendix are appropriately contained in the ICA, we do not agree that AT&T must agree to the application of the LIDB-AS Appendix for a service they are not currently utilizing. Accordingly, the following language will apply to Schedule 9.2.8.19.1:

> As defined in LIDB-AS, SBC will input information provided by AT&T into LIDB for AT&T accounts where AT&T uses SBC's unbundled local switch ports. SBC will not administer the LIDB database for AT&T where AT&T does not use SBC's unbundled local switch ports. Terms and conditions for SBC to administer the LIDB database for AT&T where AT&T does not use SBC's unbundled local switch ports have not been negotiated and remain to be determined.

UNE Issue 31

What interfaces are used to administer data when AT&T resells data to a third party?

AT&T's Position

AT&T uses the OSMOP interfaces and the Sleuth system (in accordance with SBC practices) to administer line records it resells to a third party. AT&T proposes that the language in Sections 9.2.8.19.4 and 9.2.8.19.6 of the ICA reflect these specific interfaces to ensure that SBC continues to support these interfaces and industry approved updates to them. SBC proposes to use vague language and undefined interfaces from its LIDB–AS generic schedule which would allow SBC to discontinue supporting these specific interfaces in the future unilaterally, at its discretion and without AT&T's acquiescence, even if AT&T desires to continue using the interfaces. This would, of course, negatively impact AT&T's ability to continue to administer the line records it resells to third parties. The Commission should adopt AT&T's proposed language to ensure AT&T's ability to continue to use these interfaces.

SBC's Position

When AT&T resells services to a third party, that record can no longer be administered by the LSR process. Instead, AT&T must utilized a direct access unbundled interfaces to create, modify, or delete its records in the LIDB database. AT&T's language must be rejected, because it could be interpreted to mean that the LSR process (in addition to the unbundled interfaces) could be used, and that is just not the case. The LSR process can not be used to update records of third parties to whom AT&T has resold services.

Staff's Position

Staff takes no position on this issue.

Commission Analysis and Conclusion

As explained in UNE Issues 30 and 33, the Commission believes that the LIDB-AS Appendix should be contained in the ICA. Consistent with that finding, we adopt SBC's language for this issue. Moreover, SBC raises valid security concerns. End-user privacy issues require more protection than the minimal language proposed by AT&T. AT&T's proposal also has the potential, because of its specificity, of requiring SBC to maintain two separate LIDB processes: one for AT&T and one for the rest of the CLEC community.

UNE Issue 32a

Should SBC be required to provide access to SBC designed AIN features, functions and services?

UNE Issue 32b

Should access to AIN be provided pursuant to a BFR with all terms and conditions and pricing negotiated pursuant to that BFR?

AT&T's Position

AT&T stated that its ability to offer AT&T customers "Privacy Manager", or like features, is essential to AT&T's consumer and business offerings in Illinois. SBC's proposed alternative of providing access to SBC's AIN Service Creation Environment via the BFR process is insufficient, discriminatory and anti-competitive. Accordingly, AT&T suggests that SBC must offer AT&T access to AIN features on a customer specific basis. In fact, despite the fact that SBC agreed to provide Privacy Manager to AT&T in Texas, California and Illinois during business negotiations, the BFR AT&T submitted at SBC's request was met by SBC with nothing but various reasons why SBC was not obligated to provide the feature in any of those states. AT&T was forced to pursue this issue through private arbitration in California and via a complaint process in Texas. SBC is required, as a result of these proceedings, to provide AT&T with Privacy Manager in both California and Texas.

AT&T argued that the FCC's UNE Remand Order requires that ILECs unbundle AIN databases and the related Service Creation Environment ("SCE"), Service Management System ("SMS"), and Signal Transfer Points ("STPs") to CLECs. The UNE Remand Order further requires, AT&T claims, that the ILEC make available the AIN features as UNEs if the ILEC does not provide non-discriminatory access to its AIN SCE.

SBC suggests that AT&T simply utilize SBC's access to the AIN Service Creation Environment on a BFR basis to create its own software to perform the same tasks as the SBC Privacy Manager. However, the BFR-required access that SBC grants AT&T to its AIN SCE in Illinois is the very same access that the Texas Commission has already determined is insufficient to exempt SBC from its obligation to unbundled Privacy Manager for requesting CLECs. SBC implements the same access to the AIN network in both Texas and Illinois, as its processes outlined on its website are virtually identical. This Commission should reach the same conclusion as the Texas Commission in its interpretation of the FCC's UNE Remand Order. Specifically, the Commission should find that SBC has failed to demonstrate, as it must, that it is offering nondiscriminatory access to its Service Creation Environment and is, therefore, required by the FCC's UNE Remand Order to provide AT&T with Privacy Manager on a customer specific basis and at UNE rates. SBC's offering has never been the subject of a Commission investigation, has not been thoroughly examined by Staff and the Illinois CLECs, and has never been approved by this Commission as nondiscriminatory.

AT&T contended that, given the fact that SBC proposes that AT&T gain access to its Service Creation Environment via the BFR process, SBC cannot, by definition, demonstrate that access to its SCE is nondiscriminatory. First, as Schedule 2.2 of the parties' Agreement demonstrates, the earliest AT&T would even receive a BFR Quote from SBC for gaining access to the SCE – even under optimal circumstances – is six months. Second, there is no guarantee that AT&T will gain its desired access to the SCE, even if it submits a BFR to SBC. Third, given the fact that BFRs are customarily used as a vehicle for obtaining a unique or carrier-specific product or service offering, there is no way to monitor, test or ensure that each CLEC is being treated in a nondiscriminatory fashion when it seeks access to SBC's SCE. Because SBC concurrently will not make Privacy Manager available to AT&T, which SBC offers for free as a "win back" tool, AT&T is at a great competitive disadvantage in attempting to compete in the Illinois marketplace. It is critical to AT&T's ability to compete in the local exchange market for residential and small business customers to include this requirement in AT&T's ICA with SBC. Based on AT&T's experience, it should only take a little more than a week (with overtime) to develop the codes (Req Types) and systems necessary to provide Privacy Manager to AT&T. The Commission should eliminate the competitive disadvantage resulting from SBC's failure to offer nondiscriminatory access to SBC's AIN Service Creation Environment by adopting AT&T's proposed language for Issue 32.

SBC's Position

The question presented in Issue 32.a is whether AT&T is entitled to Privacy Manager® and all other AIN-based proprietary services developed by SBC. The FCC has conclusively ruled in the UNE Remand Order that Privacy Manager® is not an unbundled network element available to CLECs. Moreover, FCC Rules 51.319(e)(2)(ii) and 51.317(a) state that LECs are not required to unbundle proprietary services created in the AIN platform. AT&T's proposed language seeks access to exactly those types of AIN-services, and should be rejected. It should also be rejected because SBC provides

full access to its Service Creation Environment ("SCE") and its Service Management System ("SMS"), as it is required to do so by the FCC rules. Accordingly, AT&T may design and create proprietary services of its own, as envisioned by the FCC rules.

Issue 32.b asks the Commission to determine the proper method by which AT&T may access SBC's SCE and SMS to design and to deploy those services within SBC's network. This is a crucial issue because AT&T argues that its inability to access the SCE and SMS justifies its claim to the proprietary services developed by SBC. This argument should be rejected out of hand for the simple reason that the resolution of Issue 32.b will – by definition – establish the appropriate terms and conditions for AT&T's access to the SCE and SMS, so the drastic "penalty" AT&T seeks is groundless.

SBC proposes revised language to make it clear that AT&T can access its SCE and SMS without going through the bona fide request process. In fact, SBC proposes new language which is almost identical to language proposed by AT&T on this point. SBC clarifies, however, that before a new AT&T service can be deployed on SBC's network, it must be thoroughly investigated and tested. The established bona fide request process is the most suitable procedure to accomplish the deployment

Staff's Position

Staff took no position on this issue.

Commission Analysis and Conclusion

Two issues arise here. First, whether the access SBC provides to its AIN Service Creation Environment is discriminatory. Second, whether SBC must allow AT&T access to Privacy Manager.

FCC rules require that CLECs have access to SCE and SMS in order to design and deploy their own AIN-based services. SBC originally offered AT&T access to these via the BFR process. SBC now proposes that the initial deployment of the AIN UNE will be subject to the BFR process, but that future access will be subject to the process laid out in SBC's Initial Brief. AT&T claims that the access offered by SBC is discriminatory.

In its Reply Brief, AT&T does concede that it is an improvement to not require the BFR process to design AIN services, but continues to complain that the BFR is required to deploy CLEC designed AIN services. We find, however, that the express purpose of the BFR is to determine the price and specifics of new products. If SBC is failing to offer network elements that the FCC has determined must be offered on an unbundled basis to AT&T in a manner consistent with the FCC's orders and rules requiring such offerings, AT&T may pursue that claim through the Commission's complaint processes.

Privacy Manager, a piece of software, is an AIN-based feature that allows customers to choose several alternatives to screen and/or reject calls from

telemarketers and other callers that do not transmit identifying information. As such, it is of value to end-users which SBC uses to win back customers. Technological advances, such as Privacy Manager, are costly for companies to develop. Companies would not be willing to invest this money if they were required to share their developments with competitors. The FCC has promulgated rules reflecting this:

> Notwithstanding the incumbent LEC's general duty to unbundle call-related databases, an incumbent LEC shall not be required to unbundle the services created in the AIN platform and architecture that qualify for proprietary treatment. 47 CFR § 51.319(e)(2)(ii)

We reject AT&T's contention that if the access provided to the AIN is discriminatory, then SBC must give AT&T access to Privacy Manager. This argument is in direct contradiction with this FCC rule.

AT&T is correct, however, that the Commission can impose additional unbundling requirements on SBC, as long as the requirements are consistent with TA 96 and the FCC's regulations. UNE Remand Order, para. 145. In support of this, AT&T explains the ease with which SBC could provide AT&T with access to Privacy Manager. AT&T also complains that SBC is winning customers back with the Privacy Manager service. These are not sufficient reasons for imposing additional unbundling requirements on SBC. If anything, this argument leads us to believe that AT&T should develop its own unique AIN based services to lure customers back to it.

Accordingly, AT&T's request is denied and SBC's language is adopted, as modified in its Initial Brief.

UNE Issue 34

Should this schedule have a separate indemnification section over and above the language found in the GTCs?

AT&T's Position

AT&T stated that a separate indemnification for Schedule OS/DA is wholly unnecessary and redundant. The indemnification provision of the General Terms and Conditions Article sufficiently covers indemnification for the entire ICA. AT&T stated that there is absolutely no reason the Agreement requires a separate indemnification provision for the provision of OS and DA.

In its Reply Brief, AT&T indicates that it accepts SBC's language with two modifications: 1) that the clause "unless the loss was caused by the gross negligence, or intentional or willful misconduct by SBC-AMERITECH, its employees or agents" be added to the tail end of SBC's language, and 2) that the language be included in Section 1.7.3 and not the OS/DA article.

SBC's Position

SBC proposes that AT&T indemnify it against certain losses that SBC may incur as a result of SBC's provision of Operator Services and Directory Assistance to AT&T. SBC's proposed language is reasonable, and AT&T's witness did not suggest otherwise. Rather, AT&T's only objection appears to be that the proposed provision is unnecessary because the protection it provides is already provided by the general indemnification language that appears in the General Terms and Conditions portion of the Agreement. In reality, however, SBC's proposed language or the OS/DA article is unique to OS/DA and provides indemnification that is not provided in the General Terms and Conditions.

Staff's Position

Staff took no position on this issue.

Commission Analysis and Conclusion

We agree with SBC that the OS/DA article is unique and reflects Commission approved tariffs that limit SBC's liability in relation to OS/DA. Accordingly, we reject AT&T's proposals included in its Reply Brief and adopt SBC's language. AT&T does not dispute that the language is consistent with limitations of liability language found in both parties' tariffs and helps to keep the price of OS/DA low for end-users.

D. Collocation Issues

Collocation Issue 1

Should AT&T have the right to access and maintain virtually collocated equipment ("VCE")?

AT&T's Position

AT&T has proposed language that would entitle it to continue to access and maintain its virtually collocated equipment as it has done for more than six years. The current agreements between AT&T, TCG, and SBC, which resulted from an arbitration, gave AT&T and TCG the right to perform their own maintenance on their virtually collocated equipment. AT&T asserted that nothing had changed to warrant departure from this long-followed practice.

In addition to continuing AT&T's currently existing contractual rights, AT&T stated that other reasons for allowing it to continue performing maintenance on its virtually-collocated equipment include the following: (1) AT&T's proposed method for access provides adequate security for SBC's and other CLECs' equipment, consistent with the provisions of SBC's collocation tariff, (2) SBC's proposed approach would impose an additional cost for AT&T to maintain multiple circuit pack inventory, and (3) SBC's

approach would create the potential for delaying repairs to equipment that is service affecting.

Under the current ICA, AT&T is required to use a security escort provided by an SBC employee and selected by SBC. The security escort method has been implemented by SBC in its Illinois Collocation Tariff. AT&T pays for the security escort service based upon SBC's standard hourly rates for the type of personnel selected by SBC. For five years, AT&T, CLECs and SBC ILECs have been working under these procedures in several states and there has not been a single security incident involving AT&T employees in SBC central offices. Thus, AT&T stated, there is absolutely no reason to change what has been working well for the last five years.

AT&T stated that SBC's insistence on performing the maintenance on AT&T's virtually collocated equipment is problematic. Where SBC has been responsible for maintaining virtually collocated equipment, it frequently has required AT&T's intervention to resolve all but the most basic maintenance issues, often doubling AT&T's expense to perform this maintenance work. The other alternative open to AT&T would be to purchase additional space from SBC for a secured storage cabinet at the virtual collocation site to store circuit packs for SBC's technicians to use in basic maintenance, which would result in large additional expenses and loss of time.

AT&T, in its Reply Brief, argues that the Commission stated in its Arbitration Decision in Docket No. 96 AB-003/004, its decision "to allow Ameritech to select the type of personnel to act as an escort … should address Ameritech's concerns over possible damage to its network because it will have the appropriate personnel at the site to ensure against inappropriate actions by AT&T." Order, p. 54.

AT&T contended that SBC merely alluded to non-specific and unidentified security concerns and similarly vague and unsubstantiated "violations, by AT&T and other CLECs." As AT&T witness Noorani testified, however, that AT&T is unaware of any security violations by AT&T. SBC has not brought any such violations to the attention of AT&T, either formally or informally. Any security violations would certainly be quite rare, if they exist at all, given that SBC has had the right to choose the escort, which is paid for by AT&T. AT&T argues that the logical conclusion to draw from SBC's silence regarding any such violations is that if in fact such violations have occurred, they are the result of SBC's failure to choose an appropriate or reliable escort.

AT&T further argued that SBC misleadingly argues that the Commission's Order in Docket 99-0511 and the FCC's Orders regarding virtual collocation, both of which post-dated the AT&T arbitration decision giving AT&T the right to access and maintain its virtually collocated equipment, have "effectively overruled" the Commission's arbitration decision. In fact, AT&T contends, SBC goes so far as to state that "the FCC has concluded that CLECs are not entitled to access to virtual collocation." (SBC Init. Br. at 182)

AT&T argued that SBC's Initial Brief seriously misstates the record and the Commission's Order in Docket 99-0511. In that docket, AT&T contends, the issue arose

because SBC wanted to add the following sentence to Code Part 790's definition of "virtual collocation": "The virtual collocator has no right to enter the LEC central office." Order dated March 29, 2002, Docket 99-0511, p. 91. In arguing for the inclusion of that restriction, SBC relied upon the very same FCC paragraphs, provisions, and orders it relies upon at page 182 of its Initial Brief. Id., p. 92. The critical fact that SBC's Initial Brief omits, AT&T argues, is that the Commission rejected SBC's proposed sentence denying virtual collocators the right to enter the LEC central office. As such, nowhere in the revised Code Part 790 rule adopted by the Commission does it state that a virtual collocator shall not have the right to access its virtually collocated equipment.

Rather, the Commission concluded that SBC's proposed language was "unnecessarily restrictive in that it would prohibit an ILEC and a CLEC from voluntarily negotiating terms under which a CLEC may have access to virtually collocated equipment." Id., p. 93. Contrary to SBC's assertion here that "the FCC has concluded that CLECs are not entitled to access to virtual collocation" (SBC Init. Br., p. 182), AT&T continues, this Commission concluded in its Order in Docket 99-0511 that: "Nothing in the FCC's orders or rules prevent carriers from [accessing virtually collocated equipment] and it appears from the record that some have already done so." Id., p. 93 (emphasis added). AT&T believes that it is clear from the Commission's pronouncements that nothing in that Order "overruled" AT&T's prior arbitration decision – as SBC contends – or retracted the rights of those carriers that already had the right to access their virtually collocated equipment, including AT&T. Accordingly, SBC's arguments have already been rejected by this Commission. The Commission should maintain the status quo and continue to allow AT&T the right to access and maintain its virtually collocated equipment, as it does so today. As AT&T witness Noorani testified, this process has, over the past seven years, proven to be workable, secure, efficient, and cost-effective. (AT&T Ex. 6.0, pp. 3-10)

SBC's Position

In its Initial Brief, SBC argued that the FCC and the Commission differentiate between virtual and physical collocation equipment. SBC cites the Commission's Order on investigation of the Part 790 Rules, Docket 99-0511. The Order finds that CLEC access to VCEs conflicts with the FCC's current conclusions on this issue, and that the FCC intends on ILECs maintaining VCEs.

SBC cited the FCC *Local Competition Order* ¶ 559 ("Interconnectors, however, do not pay for the incumbent's floor space under virtual collocation arrangements and have no right to enter the LEC central office. Under our virtual collocation requirements, LECs must install, maintain, and repair interconnector-designed equipment . . ."), FCC *706 Order* ¶ 19, n. 27 ("In a virtual collocation arrangement, the competitor designates the equipment to be placed at the incumbent LEC's premises. The competing provider, however, does not have physical access to the incumbent's premises. Instead, the equipment is under the physical control of the incumbent LEC, and the incumbent is responsible for installing, maintaining, and repairing the competing provider's equipment."), *Order on Reconsideration* ¶ 9, *Virtual Collocation Order*, 9 F.C.C.R. 5154, 5158 at ¶ 7 (1994), and *Local Competition Order* ¶ 607 ("Finally we decline to require

that incumbent LECs provide virtual collocation that is equal in all functional aspects to physical collocation.").

SBC contended that the Commission's recent decisions are in line with several other state public utility commissions on virtually collocated equipment: the Public Service Commission of Wisconsin held that AT&T is not entitled to access and maintain virtually collocated equipment. Similarly, the Michigan Public Service Commission overturned an arbitration panel recommendation to allow access to VCEs, stating that finding to be inconsistent with FCC precedent.

Staff's Position

Staff took no position on this issue.

Commission Analysis and Conclusion

The instant issue concerns virtual collocation equipment as defined in the Commission's investigation of the Part 790 Rules:

> Virtual Collocation is an offering by an ILEC that enables an Telecommunications Carrier or End User to specify equipment to be used for interconnection for the purpose of accessing LEC, switched and special access services or access to unbundled network elements in an ILEC's premises and electronically monitor and control the Telecommunications Carrier or End User's communications channels terminating in such equipment. Docket 99-0511, at 232.

We find SBC's request to limit AT&T's access to virtually collocated equipment to be uphld by the Commission's Order in Docket 99-0511. We concluded that it would be too restrictive to unconditionally deny CLECs access to virtually collocated equipment when ILECs and CLECs might want to negotiate that term in their ICAs. Id. at 236. However, that is not to say that the Commission allowed CLECs access to virtually collocated equipment. In fact, the Commission concluded that in light of several FCC Orders, the FCC intended for ILECs to maintain virtual collocated equipment. In its conclusion the Commission wrote:

> Given the FCC's pronouncements on this issue, the Commission finds Staff's position most reasonable. The additional language sought by Ameritech, while consistent with the FCC's determinations, is unnecessarily restrictive in that it would prohibit an ILEC and a CLEC from voluntarily negotiating terms under which a CLEC may have access to virtually collocated equipment. Nothing in the FCC's orders or rules prevent carriers from doing so and it appears from the record that some have already done so.

> On the other hand, the Joint CLECs' language goes too far in the opposite direction. Mandating that CLECs have access to virtually collocated equipment conflicts with the FCC's current conclusions on this issue. In addition, the Commission agrees with Ameritech that the FCC intends for virtually collocated equipment to be maintained by the ILEC. Id.

In light of the our decision in Docket 99-0511 and the FCC's stance on the matter, the Commission rejects AT&T's contention that we should direct SBC to allow AT&T to continue to access virtually collocated equipment. Given that this has become an issue for arbitration, it is clear the parties were unable to voluntarily negotiate for AT&T's access to the VCE.

Furthermore, this decision reflects changes in the telecommunications environment since the adoption of TA 96. Despite AT&T's plea to maintain the status quo, the status of a Central Office today is dissimilar to that of 1997. The increase in CLECs has made the central office a much busier environment, and this puts VCE, that cannot be caged or segregated, at considerable danger. The FCC and the Supreme Court have repeatedly upheld an incumbent's right to protect its network. *See* Verizon v. FCC, 535 U.S. 467, 536, 122 S.Ct. 1646, 1685 (2002). To maintain the security and integrity of the Central Office, we agree with SBC that an escort service is not enough and deny AT&T access to virtually collocated equipment at SBC Central Offices. We encourage the parties to continue discussions on how to best maintain VCE equipment on an ongoing basis, including, the possibility of AT&T placing a cabinet in SBC's central office for the storage of circuits.

Collocation Issue 2(b)

Can AT&T locate equipment on its own side of a condo building to access UNEs by cabling to Ameritech, in place of a collocation?

AT&T's Position

AT&T's proposed language comes from the current ICA and was arbitrated and adopted by the commissions in all the SBC-Midwest states in the first round of interconnection agreement arbitrations five years ago. This language provides AT&T the ability to place equipment in its own space in a Condo building, rather than requiring that AT&T collocate in space leased from SBC. That way, AT&T can directly interconnect cable from equipment in its own space to the SBC facilities in the SBC space.

AT&T made only one change to the existing language; it removed the reference to a "mid span meet." A "mid span meet" implies that both parties provide half the cabling and meet at a mid-point. In actuality, if AT&T implements this method of interconnection, AT&T will pay for all the cabling and terminate to facility assignments designated by SBC in the same way as AT&T cables to the SBC-designated points during conventional collocation.

It is AT&T's position that neither the Telecommunications Act or FCC regulations require AT&T to purchase collocation from SBC under the circumstances presented by the condominium arrangements. In the unique circumstances presented by a condominium arrangement, AT&T has already collocated within the same building as the SBC central office, under an existing arrangement that was created at the time of divestiture in 1984. Additionally, it makes sense that if AT&T already has a presence in the same building as SBC's wire center, AT&T should not be forced to rent additional space in the SBC portion of the same building. SBC's proposal would have AT&T waste precious SBC collocation space, which is at a premium and may be needed for another CLEC in the future.

AT&T stated that it was not attempting to expand the use of the condominium arrangement with SBC beyond the ones existing at the time of the 1984 divestiture. However, AT&T does seek to cross-connect to SBC's other networks located in SBC's portion of the condo building without having to collocate in the SBC portion of the building. This is consistent with the FCC's *Advanced Services Order*.

Finally, it is AT&T's position that the AT&T equipment located in the condominium space should be treated as collocated equipment in all respects, and AT&T should have the right to interconnect directly to other collocated carriers in SBC's portion of the premises. AT&T stated that it was willing to accept either the existing Illinois ICA language or the modified ICA language that was arbitrated in Indiana.

SBC's Position

AT&T seeks access to SBC's Main Distribution Frame, which is located at the heart of SBC's telecommunications network. SBC opposes granting AT&T, or any CLEC, access to this sensitive area. Such access not only would jeopardize network safety and reliability, but also is unnecessary and inconsistent with FCC and state commission decisions. Both the FCC and this Commission have addressed this issue and concluded that CLECs should not have access to the ILEC MDF. There is no reason for a contrary conclusion here.

Staff's Position

Staff took no position on this issue.

Commission Analysis and Conclusion

This issue concerns whether or not AT&T can locate equipment on its own side of a condo building to access UNEs by cabling to SBC in place of a collocation. This issue is similar to Interconnection Issue No. 3 and SBC contends that this issue is covered in Interconnection Issue No. 3. AT&T is proposing that it be able to place equipment in its own space in a condo building in which AT&T would otherwise be required to collocate in space leased from SBC. AT&T could then directly interconnect

cable from equipment in its own space in the condo building to the SBC facility in the SBC space in the condo building. AT&T claims that it has a unique arrangement compared to other CLECs. At divestiture, AT&T used 3 dimensional conveyance or a condominium agreement as a way to satisfy the modified final judgment requirement to separate assets. Since AT&T and the other regional Bell operating companies both had network equipment in the same buildings, these arrangements allowed both companies to retain a portion of ownership in each of the buildings rather than requiring one of the two parties to relocate all of their equipment to a new building. AT&T's proposed language for Section 12.3.5.7 comes from the parties existing ICA, and in any event, would only apply to "condo" building arrangements established at the time of the AT&T divestiture (1984), of which there are only three in Illinois. AT&T and SBC can easily and more economically interconnect their facilities to provide varied service rather than exhaust pressured collocation space. AT&T claims that this method of interconnection is non-discriminatory and efficient.

SBC takes the position that this language is not necessary and is covered under other areas. SBC also feels that the request by AT&T is too vague and ignores the FCC recognition that the ILEC has the right to decide how its central office is configured. This is a principle that AT&T accepted when it agreed to Collocation Section 12.3.5.2 that SBC was entitled to determine the path that AT&T cables took when brought from its condominium space to its collocation area within SBC's central office. SBC also has a concern about the type of cable that AT&T is proposing to use and any cost that could be related to maintaining this structure.

AT&T is attempting to collocate with SBC in a condo building that already exists. According to AT&T testimony, there are only three condo buildings that would be affected by this proposal. AT&T indicated in its Reply Brief that it would be willing to accept the existing ICA language to resolve this issue. SBC points out that the new language proposed by AT&T incorporates Article 3, Section 3.3.3. This language should not be included in this section. It is reasonable that AT&T be allowed to collocate in the terms from the existing ICA at these three sites.

Therefore, for Collocation 2 the language should read as follows:

> Section 12.3.5.7: When AT&T and SBC are located in a "condo" building, AT&T shall be allowed to locate in AT&T Wire Centers, equipment that normally would have been Collocated in SBC Wire Centers, to enable AT&T to access SBC's unbundled network elements. Such equipment will be connected to SBC's unbundled network element and/or local network through a mid-span meet arrangement at the DSO, DS1, DS3, OC3, OC12, OC48 and where available, STS-1 rates. Subject to any technical limitations on the distance between Wire Centers. AT&T will pay all costs (as defined in Section 252(d) of the Act) relating to any such mid-span meet arrangements and will also be responsible for the connection between AT&T's Wire Center and SBC's facilities.

Collocation Issue 3

Should the ICA terms and conditions allow AT&T to have access between AT&T's collocation space and Ameritech's distributing frame to verify and test intra-office wiring?

AT&T's Position

AT&T stated that where AT&T is collocated in an SBC central office ("CO"), SBC is refusing to provide AT&T access to the Connecting Facility Assignment ("CFA") at parity with the manner in which SBC itself may access the CFA. Moreover, AT&T asserted that SBC discriminates against CLECs in approving vendors for access to the CFA. AT&T stated that several factors tend to make using and maintaining CFA's problematic: ILEC wiring pattern differences, DSLAM wiring requirements, CFA usage volume, ILEC/CLEC CFA software problems, and bad wiring. AT&T stated that these problems could be resolved in a majority of cases by testing the wiring from the DSLAM to DMARC.

AT&T stated that there are also problems with the current options offered by SBC for CFA testing. SBC does not allow AT&T to perform the testing necessary to resolve these CFA problems. In order to test the wiring between the MDF and its DSLAM, a CLEC must hire a third party contractor approved by SBC. The contractor must then set up an appointment at the Central Office to conduct the tests. There are at least three problems inherent with being required to hire a contractor to perform the testing: delays in service, additional expense for the CLEC and control of service. AT&T recommended three solutions for these problems: give AT&T in-house technicians the same access to MDFs that SBC in-house technicians have; at a minimum, give AT&T in-house technicians open access to conduct tests on the wiring between the AT&T collocation space and the MDF; or reconfigure the collocation space in SBC Central Offices in a manner similar to that employed by Verizon and SBC-Pacific Bell, where the ILEC is responsible for the wiring between the collocation area and the MDF.

With respect to SBC's security concern, AT&T indicated that it would agree to pay for an SBC security escort. However, SBC's position is that even with a security escort SBC will not allow AT&T craft persons to work on the MDF. SBC continues to insist that the CLEC hire a third party vendor, approved by SBC, to work on the CLEC's connecting block on the MDF. In an attempt to meet SBC's concerns, AT&T is willing to have its in-house technicians subject to the same sort of training, qualifications, bonding requirements and security and background checks that SBC requires of the approved third-party vendors and their employees. Accordingly, AT&T contended that its proposed language should be adopted.

SBC's Position

AT&T seeks access to SBC's Main Distribution Frame, which is located at the heart of SBC's telecommunications network. SBC opposes granting AT&T, or any CLEC, access to this sensitive area. Such access not only would jeopardize network

safety and reliability, but also is unnecessary and inconsistent with FCC and state commission decisions. Both the FCC and this Commission have addressed this issue and concluded that CLECs should not have access to the ILEC MDF. There is no reason for a contrary conclusion here.

Staff's Position

Staff takes no position on this issue.

Commission Analysis and Conclusion

AT&T seeks access to SBC's MDF in order to test the wiring from the DSLAM to the DMARC. SBC refuses to give AT&T, or any CLEC, access to its MDF, mainly for security reasons. AT&T recommended three solutions for this concern: give AT&T in-house technicians the same access to MDFs that SBC in-house technicians have; give AT&T in-house technicians open access to conduct tests on the wiring between the AT&T collocation space and the MDF; or reconfigure the collocation space in SBC Central Offices in a manner similar to that employed by Verizon and SBC-Pacific Bell, where the ILEC is responsible for the wiring between the collocation area and the MDF.

The FCC, in its Advanced Services Order agrees that security of the ILEC's equipment is important. Advanced Services Order at para. 48. We have reached a similar conclusion in prior arbitrations. Covad Rhythms Arbitration, Dockets 00-0312/00-0313, at 23 . Bearing in mind that many CLECs will adopt this ICA, we are concerned with the ramifications of allowing any CLEC access to the MDF. If we let AT&T in, we have to let them all in. This is a legitimate security concern on SBC's part. We disagree with AT&T that the current arrangement results in disparate treatment. All CLECs use the same third party vendors or SBC technicians, as does SBC.

We do not agree, however, with SBC's insistence that the DMARC remain on SBC's MDF. AT&T raises valid concerns regarding testing the wiring between the MDF and the collocation area. Accordingly, we direct that, if AT&T so desires, the DMARC point will be moved to a mutually agreeable area accessible to both parties. AT&T and SBC will split any initial costs.

Accordingly, the following contract language is adopted:

12.3.6 Intra-Office Wiring

12.3.6.1 Whenever AT&T is responsible for either the installation, testing and/or maintenance of any intra-office wiring that connects the AT&T collocation space and the SBC-Ameritech Main Distribution Frame ("MDF"), AT&T has the option to request that its responsibility end at a location off the MDF, at a mutually acceptable location accessible to both AT&T and SBC. If AT&T opts for this reconfiguration, the parties will split the initial costs.

E. Local Number Portability ("LNP") Issues

LNP Issue 1

Should the ICA contain Hot Cut language over and above that covered in the ICA's OSS Schedule 33.1?

AT&T's Position

AT&T did not propose any language relating to LNP Issue 1 because this topic is sufficiently addressed in the agreed OSS Schedule 33.1. The additional hot cut language that SBC proposed for Section 4 of the LNP Article of the ICA is, at the very least, unnecessary for all but the LNP orders that involve complex services like Centrex and PBX equipment, because SBC will implement an enhanced LNP process in the third quarter of 2003 that will eliminate the need to request coordinated hot cuts on simple standalone LNP orders. Nevertheless, AT&T is willing to include language on standalone LNP orders in Schedule 33.1, the same language that is provided in SBC's proposed 13.4.1.

SBC also proposed language that would require AT&T to pay hot cut charges for standalone LNP orders. There is no need for this language, as any costs that might possibly be related to coordinated hot cuts would more likely be associated with the handling of UNE Loop with LNP orders rather than standalone LNP orders. Furthermore, AT&T has not had an opportunity to evaluate the appropriateness of applying the labor rates proposed by SBC to the specific activities associated with coordinated standalone LNP hot cuts. AT&T believes that if SBC wishes to charge for CHC in standalone LNP situations, it should develop a cost-based non-recurring charge for this service. Such a charge should be developed in a cost proceeding before the Commission in which SBC files and presents appropriate cost support for the proposed charge.

SBC's Position

SBC is entitled to receive compensation for the work associated with a coordinated hot cut. This is work undertaken on a special basis at AT&T's request in order to provide an even smoother than normal transition of an end users service from SBC to AT&T. Under this process, an SBC technician coordinates with the CLEC so that the end user's telephone remains activated in the SBC switch until the precise time that AT&T is ready to activate service in its witch. SBC is willing to provide this service to AT&T, however, AT&T should compensate SBC for the additional work required at SBC's federal access labor rates.

Staff's Position

Staff took no position on this issue.

Commission Analysis and Conclusion

A coordinated hot cut ("CHC") is a service where an SBC technician coordinates with the CLEC so that an end user's telephone remains in service in the SBC switch until the precise time that AT&T is ready to activate the service in the switch. This service takes extra time to make sure that both companies perform a cutover at the same time. SBC maintains that it should be entitled to additional labor rates for the work performed. AT&T argues that this should be covered in the OSS schedule 33.1

We agree with SBC. If the technicians take extra time to perform the necessary work involved, SBC should be compensated for the work. SBC should apply the labor rates set forth in the SBC's FCC Access Tariff No. 2. AT&T has failed to justify that SBC should develop a nonrecurring charge for the service.

This service involves Local Number Portability and not OSS. Therefore, this is the appropriate area to address coordinated hot cuts.

LNP Issue 2

SBC Issue: Must SBC include Enhanced LNP process language in the agreement?

AT&T Issue: Should the ICA contain language describing an enhanced LNP process that SBC-Illinois will make available during the term of the agreement?

AT&T's Position

AT&T's proposed language describes the enhanced LNP process (the "LNP A&D process") that will apply to all simple standalone LNP-only orders in early September 2003. SBC refused to include language regarding the LNP A&D process in the ICA, but because SBC intends to implement the LNP A&D Process in Illinois prior to the ICA's effective date, the process and any contractual provisions associated with it ought to be covered in the new ICA. There is no need to re-open negotiations on a contract amendment to incorporate the enhanced process when the capabilities of that process are known and agreed-to by the parties. Indeed, SBC's proposed language could later provide an opportunity to hold access to the enhanced process hostage to lengthy and unnecessary contract amendment negotiations. AT&T's proposed language avoids the need to develop, process and file an ICA amendment at a later date. AT&T suggested that, as an alternative, SBC should be directed to provide specific language describing the LNP A&D process for the ICA.

AT&T also asserted that a bona-fide request is not an appropriate technique for determining what charges should be assessed for the coordinated standalone hot cut procedure. AT&T stated that if SBC believes that its costs for this procedure should be recovered through charges to CLECs, SBC should develop proposed charges and file them with the Commission to initiate a separate proceeding to review SBC's proposed charges.

SBC's Position

The question presented is whether the contract should contain AT&T's very detailed language regarding a process that has not yet been developed, called "Enhanced LNP". The process, which automates current safeguards associated with the LNP migration process, is scheduled to be deployed by SBC later this year. Since this process is still under development and does not yet exist, AT&T's proposal should be rejected.

SBC has been working through implementation issues for the Enhanced LNP process in the CLEC User Forum. The development process is ongoing and basic questions of technical feasibility, timing and methodology remain open. Once this process is finalized and implemented, SBC will make it available to all CLECs on a nondiscriminatory basis. There is no need to address the process in the Agreement at all. Nonetheless, in order to address AT&T's concerns, SBC is willing to negotiate terms and conditions in an amendment to the Agreement at the appropriate time. SBC's proposed language, set forth below, formalizes this compromise position:

> 13.5 Enhanced LNP process.
>
> 13.5.1 In the event that SBC-Illinois makes available new or enhanced LNP processes to CLECs that are not described in this Agreement, and AT&T desires to take advantage of such new or enhanced LNP processes, AT&T will notify SBC-Illinois in writing and the parties shall then negotiate appropriate terms and conditions to be embodied in an amendment to this Agreement.

This language serves as a placeholder and is the most the Agreement could possibly say about the Enhanced LNP process at this time.

According to SBC, AT&T's proposed language is unacceptable for a number of reasons. First, it reflects an early description of the enhanced LNP process that was rolled out in California, a process that was later revised as development continued. Second, there are differences between the systems in California and those in Illinois, so there is no reason to believe that the California language, even if correct for California, would work for Illinois in any event. Third, if the Enhanced LNP process is made available in Illinois, it will be a brand new process that will undoubtedly be modified and refined once CLECs actually begin using it. This type of mutually beneficial modification would be hampered if the process details are set in concrete in the Agreement as AT&T proposes.

In summary, the Commission should adopt SBC's proposed language for Section 13.5.

Staff's Position

The Enhanced LNP process is not yet available to CLECs, therefore, Staff recommends that §13.5.1 be modified such that a BFR process be used to determine the appropriate rates for the Enhanced LNP when it is released.

Commission Analysis and Conclusion

This issue deals with the enhanced LNP process that has yet to be implemented in Illinois. AT&T is proposing language to address this process so it will be available once it is introduced in Illinois. SBC maintains that any specific language would be premature, since the process may not be technically feasible in Illinois.

We agree with and adopt SBC's language on this issue. If and when the enhanced LNP Process is introduced in Illinois and AT&T wishes to take advantage of the process, it will notify SBC in writing. The parties can then negotiate the terms and add it as an amendment to this Agreement.

F. Right of Way Issues

ROW Issue 1

Should SBC permit AT&T to do its own make ready work?

AT&T's Position

AT&T proposed that it be allowed to do its own make ready work in those limited cases in which SBC indicates that it cannot perform the work in time to meet AT&T's requested due date, or within a reasonable time frame. By forcing AT&T to use SBC labor to do make ready work and the placement of attachments that could be easily performed by AT&T's own craft or contractors, SBC's proposal would impose additional costs on its competitor, and would create unnecessary delays in AT&T's provisioning of service to its end users. Moreover, since AT&T must compensate SBC for SBC's labor at SBC's contract (collective bargaining agreement) rates, SBC's proposal would require AT&T to incur greater cost than AT&T would incur to do this work using its own labor. However, the collective bargaining agreements voluntarily entered into between SBC and its unions should only govern the relationship between those two parties and not be foisted upon AT&T. Further, AT&T pointed out that allowing a third-party licensee like AT&T to do its own make-ready work is not the same thing as the employer (SBC) displacing its union employees by contracting its own work out to third parties. The FCC has adopted a rule that prohibits pole owners from requiring attaching parties to use the pole owner's workers to perform make ready work and make attachments on poles. Instead, it allows the attaching party to use its own or third-party workers who have the same qualifications as the pole owner's workers. The same principle should govern the disposition of ROW Issue 1, and AT&T's proposed language should be adopted.

SBC's Position

AT&T wants to perform a fundamental alteration to SBC's Poles, Ducts, and Conduits ("Structure") by installing higher poles, enlarging manholes and the like. SBC has no legal obligation to allow AT&T to perform this work, as made clear by an FCC bureau order In Cavalier Telephone LLC v. Virginia Electric Power, File No. PA 99-005 (rel. June 7, 2000). SBC is willing to perform this work for AT&T on a non-discriminatory basis. Equally important, AT&T's proposal would unreasonably interfere in the collective bargaining agreement between SBC and its Union, the IBEW. This collective bargaining agreement states that work can only be done by others if such work was customarily done by others under a previous collective bargaining agreement, which is not the case with the make ready work that is the subject of this issue. AT&T's proposal would put SBC in legal jeopardy and is commercially unreasonable.

Commission Analysis and Conclusion

The delay in completing work in a reasonable time can affect AT&T's ability to compete. SBC has argued that this could be seen as conflicting with its collective bargaining agreement. The FCC has adopted rules that prohibit pole owners from requiring attaching parties to use the pole owner's workers. The workers from AT&T must have the same qualifications

We agree with AT&T. If SBC is unable to complete the requested work within a reasonable time frame SBC may permit AT&T to conduct Field Survey Work and Make Ready Work itself or through its own contractors.

If SBC is unable to meet the requested completion date**,** AT&T will have the option of performing the Make Ready Work to meet the requested completion date.

G. Intercarrier Compensation Issues

Intercarrier Compensation Issue 1

Should the pricing set forth in Section 4 of Article 21 apply to ULS-ST interswitch traffic termination?

AT&T's Position

AT&T's position is that the facilities-based reciprocal compensation rates in SBC Illinois' Tariff Ill. C.C. No. 20, Part 23, Section 2 should not apply to traffic exchanged where AT&T is purchasing ULS-ST provided by SBC. Rather, the rate proposed by AT&T and shown in Line 485 of the Pricing Schedule should apply for traffic exchanged between AT&T and SBC where AT&T purchases SBC-provided ULS-ST. Additionally, Article 21 reciprocal compensation rates will apply when traffic is exchanged between AT&T and SBC when AT&T provides its own switching functionality.

AT&T proposed a four-part reciprocal compensation structure in which AT&T would pay SBC for calls originated on AT&T's network and terminated on SBC's network based on the use of each of the four elements. For calls originated on SBC's network and terminated on AT&T's network, AT&T proposed to charge SBC a single blended rate made up of four individual rates. However, AT&T's proposed rates would not apply to calls exchanged where AT&T is using ULS-ST provided by SBC. In contrast, SBC proposed a five-part structure applicable to all non-ULS-ST-based calls exchanged between AT&T and SBC. The parties agree to the rates for Tandem Switching, Tandem Transport Termination and Tandem Transport Facility Mileage.

However, the parties have not agreed on the rate structure and rate level of the Local End Office Termination rate elements. AT&T proposed a single per-MOU rate element priced at $0.003746 per minute, while SBC proposed a bifurcated set-up and duration structure for local End Office Termination, with a per-call set-up price of $0.000496 and a per-MOU charge of $0.000927. AT&T pointed out that SBC did not provide any evidence or justification for its proposal, nor did it provide any indication that its proposal would produce revenues greater or lesser than the reciprocal compensation rates previously approved by the Commission as reflected in SBC Tariff Ill. C.C. No. 20, Part 23, Section 2.

AT&T also stated that the Commission's July 10, 2002 Order in Docket 00-0700 stated that without an investigation of the extensive cost studies necessary to support a change to the existing reciprocal compensation scheme, the set-up and duration structure proposed by SBC is artificial and inappropriate. AT&T stated that if investments are determined on an interoffice MOU basis, a matching rate structure is most reasonable, consistent with cost causation principles. Thus, AT&T contended costs should be recovered on a per MOU basis, and there is no justification or support for a structure based on call set up and duration, such as SBC proposes for the ICA. AT&T stated that nothing new has occurred to warrant or justify SBC's unilateral departure from the Commission-approved rates, which expressly rejected the set-up and call duration structure proposed by SBC for the ICA. Accordingly, AT&T stated that its proposed MOU rate structure for Local End Office Termination, set at a rate of $0.003746 as set forth on page 12 of the Pricing Schedule, should be adopted.

In his direct testimony, AT&T witness Rhinehart contended that Article 21, which governs Intercarrier Compensation, should not apply to traffic exchanged where AT&T is using unbundled local switching with shared transport ("ULS-ST") that it purchases from and is being provided by SBC. In fact, no rates or compensation matters discussed in Article 21 pertain to ULS-ST. Therefore, Mr. Rhinehart stated that Article 21 should clearly state that it does not apply when AT&T provides local service using ULS-ST purchased from SBC.

Reflecting further negotiation between AT&T and SBC, in his reply testimony Mr. Rhinehart stated that the parties have reached agreement that Article 21 will apply to ULS-ST traffic. However, what remains in dispute is revised language in paragraph 21.4 that indicates that the standard rates and rate structure for reciprocal

compensation do not apply where AT&T is using ULS-ST. Instead, distinct ULS-ST reciprocal compensation rates identified at section 9.2.7.4.1 to 9.2.7.4.4 of Schedule 9.2.7 and in the Pricing Schedule apply. The distinct rates for reciprocal compensation over ULS-ST previously tariffed by SBC correctly reflect appropriate and very distinct cost recovery for traffic termination in the environment established by the Commission in Docket 00-0700, where ULS-ST switch port prices were set to recover costs of the end office switch and all originating traffic on a flat-rate basis. Thus, reciprocal compensation associated with ULS-ST traffic should be charged at $0.001100 per MOU as set forth in ILL. C.C. No. 20, Part 19, Section 21 Sheet 45, as in effect prior to the latest revisions issued on August 21 and August 27, 2002. This is the rate last established and approved by this Commission for ULS-ST reciprocal compensation and it is reflected in AT&T's proposed Pricing Schedule to the new Agreement.

Mr. Rhinehart – whose testimony in this respect was supported by Staff Witness Dr. Zolnierek – disagreed with SBC's contention that in Docket No. 00-0700 the Commission eliminated a separate reciprocal compensation rate for ULS-ST. According to Mr. Rhinehart, SBC read one sentence of the Commission's order out of context, ignoring the balance of that same paragraph.

Based upon the Commission's findings, the Commission's Order in Docket 00-0700 could not be more clear: without the cost studies and additional record evidence on reciprocal compensation, the Commission expressly declined to make any decision(s) on issues of reciprocal compensation and, consequently, left SBC's ULS-ST reciprocal compensation scheme unchanged as it existed prior to the investigation. Nevertheless, rather than comply with the Commission's very explicit statement that it was not addressing – and therefore not changing – ULS-ST reciprocal compensation rates, SBC filed a tariff in response to the Commission's Order in ICC Docket No. 00-0700 that removed the ULS-ST Reciprocal Compensation rate element completely from its ULS-ST tariff. (ILL. C.C. Tariff No. 20, Part 19, Section 21) SBC's unilateral removal of the ULS-ST Reciprocal Compensation rate element and the associated rate level of $0.001100 from its ULS-ST tariff was wholly inappropriate. Mr. Rhinehart therefore recommended that the Commission adopt AT&T's language, which is entirely consistent with the Commission's decision in Docket No. 00-0700.

SBC's Position

The parties have now agreed that the terms of Article 21 apply to traffic the parties exchange when AT&T is using ULS-ST. The question is what reciprocal compensation rate will apply to that traffic. As Staff has explained, it should be the same reciprocal compensation rate as applies to all other traffic the parties exchange. There is no reason for ULS-ST traffic to bear a different rate, because there is no evidence that the cost of transporting or terminating ULS-ST traffic is different than the cost of transporting or terminating other traffic. Also, SBC's ULS-ST tariff expressly provides that the reciprocal compensation rate for ULS-ST traffic will be the same as for other traffic. AT&T claims that the tariff is "inappropriate," but that claim is both inaccurate (because, as Staff witness Zolnierek testified, it was perfectly appropriate for

SBC to remove the ULS-ST reciprocal compensation rate from its tariff) and irrelevant (because SBC's tariff must be taken as valid for purposes of this proceeding in any event).

Staff's Proposal

SBC's removal of reciprocal compensation rates from its ULS-ST tariff was consistent with the Commission's direction in Docket 00-0700. Furthermore, there is no evidence to indicate that SBC's charges for transport and termination should vary according to whether or not AT&T uses ULS-ST to originate traffic.

Staff, therefore, recommends that the Commission require the parties to adopt reciprocal compensation rates when AT&T uses ULS-ST that are equivalent to the reciprocal compensation rates applicable when AT&T does not use ULS-ST. Staff proposes that the parties adopt the language proposed by SBC for Schedule 9.2.7, Section 9.2.7.4.1, Schedule 9.2.7, Section 9.2.7.5. Also, the ULS-ST section of the Pricing Schedule include the end-office reciprocal compensation rates agreed to by the parties in the Third Joint Notice of Settled Issues. Furthermore, the language AT&T proposes for Schedule 9.27, Section 9.2.7.4, Schedule 9.27, Section 9.2.7.5, and Article 21, 21.1.1 and for the ULS-ST portion of the Pricing Schedule should be rejected.

Commission Analysis and Conclusion

This discussion covers UNE Issue 27, UNE Issue 29, Intercarrier Compensation Issue 1 and Pricing Issue 4. These issues all cover the reciprocal compensation rates that will apply when AT&T uses ULS-ST and the various sections of the ICA that apply.

At the heart of the issue is the interpretation of this paragraph contained in the Commission's ULS-ST Order:

> The final matter to be addressed involves the issue of reciprocal compensation for terminating access of calls originated through ULS-ST. Ameritech urges the Commission to adopt reciprocal provisions calling for it to pay to terminating CLECs the same charges (on a MOU) basis, that CLECs would pay to Ameritech when Ameritech terminates a ULS-ST call on its network. The issue is complicated by two factors. First, the Commission has previously decided that ULS-ST should be provided on a flat rate basis, while Ameritech's proposal is predicated on an MOU charge. Second, the CLECs did not respond to this proposal in their reply brief, although Dr. Ankum addressed the issue at length in his rebuttal testimony and the CLECs inserted a brief passage into a draft order rejecting any consideration of this issue in this docket. Based upon the record before us, we reject Ameritech's inclusion of reciprocal compensation terms in its ULS-ST tariff. That said, we do believe that Ameritech's fundamental position, that it should pay terminating access at the same rate as is paid by CLECs has merit. Nonetheless, our review of

> Dr. Ankum's testimony suggests that issues of reciprocal compensation are better addressed elsewhere. Specifically, Dr. Ankum suggests, and we agree, that reciprocal compensation decisions, require extensive cost studies, that are not present in this docket. Faced with a dearth of evidence on the issue, we decline to reach a decision on the issue at this time. Order, Docket 00-0700, Paragraph 90.

SBC interpreted this to require it to remove the reciprocal compensation rates contained in the ULS-ST tariff and filed a compliance tariff reflecting this interpretation.

The ULS-ST reciprocal compensation rates removed by SBC applied when SBC exchanged traffic with carriers purchasing SBC's ULS-ST offering from SBC's ULS-ST tariff. The reciprocal compensation rates formerly included in the ULS-ST tariff were lower than SBC's general tariffed reciprocal compensation rates. The parties dispute whether AT&T is entitled, when it uses ULS-ST, to the reciprocal compensation rates SBC removed from its tariffs in response to the Commission's Order in Docket 00-0700. At the heart of this dispute is whether SBC properly removed the reciprocal compensation rates from its ULS-ST tariff.

We do not agree with SBC's interpretation of Docket 00-0700. SBC's proposal, in Docket 00-0700, urged the Commission to adopt reciprocal compensation for terminating a ULS-ST call. Each party would pay the other the same rate for terminating calls. SBC proposed that it be based on a minute of use charge. The Commission rejected SBC's proposal because it was based on a minute of use charge, or in other words, because it was not a flat rate. The Commission also stated that SBC's proposal to have the reciprocal compensation rates be symmetrical had merit. Importantly, however, the Commission concluded its decision by declining to act because of the "dearth" of evidence. Id. at 24. Given that the Commission declined to make a decision, the reciprocal compensation rates for ULS-ST that were in place prior to that decision should have remained. We emphasize, however, that this statement regarding SBC's tariff filing in response to Docket 00-0700 merely serves to reject Docket 00-0700 and SBC's tariff as the basis for our decision on this issue in this Arbitration Proceeding.

Prior to Docket 00-0700, the reciprocal compensation rates included in the ULS-ST tariff differed from SBC's general tariffed reciprocal compensation rates. These tariffs were not symmetrical, however, and only applied to calls that originated on AT&T's network and terminated on SBC's network. That rate was 0.0011. Calls that originated on SBC's network and terminated on AT&T's network were subject to SBC's regular reciprocal compensation rates.

Neither SBC nor AT&T propose that the asymmetrical ULS-ST tariffs that were in place prior to Docket 00-0700 be reinstated, which further strengthens our resolve that this issue must be decided on some other basis. AT&T proposes symmetrical rates at 0.0011 and SBC proposes that its local reciprocal compensation rate be applied reciprocally.

We agree with Staff that there is no evidence to indicate that charges for transport and termination should vary according to whether or not AT&T uses ULS-ST to originate traffic. Barring such evidence, we agree that ULS-ST traffic should be subject to SBC's local reciprocal compensation rate, which leads us to adopt SBC's proposed language.

Intercarrier Compensation Issue 2a

Can the terminating Party charge exchange access to the originating Party for traffic terminating within the originating Party's local calling area?

AT&T's Position

AT&T panel witnesses Scott Finney, John Schell and David Talbott testified that under current FCC rules, all telecommunications traffic, except traffic subject to §251(g) of the Telecommunications Act of 1996, is subject to reciprocal compensation. See, e.g., 47 C.F.R. § 51.701. According to AT&T, exchange access is one of the types of traffic that is "carved out" by §251(g) and is excluded from reciprocal compensation. SBC argues that traffic should be classified as exchange access based solely on SBC's local calling area, irrespective of whether the interconnecting carrier classifies a certain call originating on its network as local or toll. It is AT&T's position that traffic originating on its network that terminates within AT&T's tariffed local calling area is Section 251(b)(5) traffic and therefore is subject to reciprocal compensation, not access charges.

SBC's proposed definition of "local calls" for Section 21.2.7 requires that such local calls "must actually originate and actually terminate to End Users physically located within the same common local or mandatory local calling area where SBC-Illinois is the ILEC." In Section 21.2.8, SBC includes language defining calls between parties in the same common local or common mandatory local calling area, but where one of the parties is physically located outside of the operating area where SBC is the ILEC, as either FX or Feature Group A. SBC's proposed language for Section 21.2.8 specifically states that such calls are not Local Calls and are not subject to reciprocal compensation. Thus, under SBC's language for Sections 21.2.7 and 21.2.8, while calls between SBC and Verizon end users in the same common local or common mandatory local calling areas are local calls, if one of the subscribers becomes an AT&T end user, then such calls would no longer be local calls but rather FX calls, even though both parties physically reside in the same common local or mandatory local calling area. AT&T disagrees and believes such calls properly are local calls subject to reciprocal compensation.

AT&T panel witnesses Finney-Schell-Talbott testified on reply that Staff witness Dr. Zolnierek was incorrect in stating that AT&T's proposal was unworkable because confusion would occur if it were adopted. The Florida Public Service Commission recently found otherwise based on its investigation into the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the

Telecommunications Act of 1996. In its Order the Florida Commission ruled that the originating carrier's local calling area should be defined as the default local calling area for purposes of reciprocal compensation if the carriers are unable to agree upon another arrangement. Consistent with the findings of the Florida Commission, a system of reciprocal compensation based on the originating carrier's local calling area is workable without creating undue confusion. AT&T's witnesses testified that adoption of different retail calling areas would not create problems in reciprocal compensation billing. Indeed, such arrangements are in place today, and billing reciprocal compensation under such arrangements has not been a problem.

The AT&T panel witnesses disagreed with Dr. Zolnierek's testimony that AT&T's proposal, if adopted, would result in asymmetrical reciprocal compensation rates. First of all, reciprocal compensation rates are not affected by whether a call is local or toll. The amount of intercarrier compensation that a LEC pays or receives can change based on whether the call is local (reciprocal compensation) or toll (access charges), but the rates themselves do not change. Therefore, adoption of different local calling areas by different LECs does not cause the reciprocal compensation rates to be asymmetrical. Moreover, the reciprocal compensation rate itself that either carrier charges the other, when applicable, will be the same for each carrier, based on the functions provided by the terminating carrier. Thus, the rate and the application of the rate are both symmetrical.

Finally, AT&T witnesses Finney-Schell-Talbott noted that adoption of AT&T's proposal would further the development of competition in Illinois because it would free AT&T from being forced to continue to mechanically copy SBC's local calling areas for reciprocal compensation purposes. However, requiring the parties to use only SBC's local calling areas for reciprocal compensation purposes stifles the development of the competitive offerings and bundled packages of service. AT&T's witnesses observed that it is hard to see how CLECs can create new and innovative service bundles if they are saddled with "cloning" SBC's historical local calling areas in the provision of local telecommunications services.

SBC's Position

The question presented by this issue is whether the parties' intercarrier compensation obligations to each other will be determined by the originating carrier's local calling areas, as AT&T proposes, or by SBC's local calling areas, as SBC proposes. SBC notes that the Commission decided this issue in favor of SBC just one year ago, and, as Staff recommends, it should adhere to that precedent. AT&T's proposal, as Staff's and SBC's witnesses both explained, would cause such confusion as to be unworkable.

Staff, while endorsing SBC's proposed language for the most part, was concerned by one aspect of it, and proposed a modification. The modification proposed by Staff, however, would do damage to the central aim of the provision – the aim with

which Staff agrees. Accordingly, SBC proposed a different modification to address Staff's concern, and the Commission should accept that modification instead.

Staff's Position

Staff recommends that the Commission adopt SBC's proposed language which would result in the demarcation between local and long distance intercarrier compensation plans being determined by a unified set of geographic divisions (the ILEC Commission approved local calling areas). Staff recommends the Commission adopt the following amended SBC proposed language for Article 21, Section 21.2.7:

> "Local Calls", for purposes of intercarrier compensation, is traffic where all calls originate and terminate within the same local and common mandatory local calling area, i.e., within the same or different Illinois ILEC Exchange(s) that participate in the same common local or common mandatory local calling area approved by the Illinois Commission.
>
> and
>
> The Parties agree that, notwithstanding the classification of traffic under this Article, either party is free to define its own "local" calling area(s) for purposes of its provision of telecommunications services to its end users but as for reciprocal compensation purposes the local calling area is determined by state commission.

Commission Analysis and Conclusion

The issue here is, for purposes of reciprocal compensation, whose local calling area should control. A sub-issue was raised by Staff, but language modifications proposed by SBC and Staff appear to have resolved this issue to everybody's satisfaction.

We adopt SBC's proposal to use its Commission approved local calling areas for several reasons. First, this proposal is consistent with our prior decisions. Docket 02-0253 at 13-14. That decision indicated that the Commission was adopting the ILEC's position only for the time being and that the time may be ripe for considering expanded local calling areas. The Commission did not intend, however, for ILECs' local calling areas to be extended in another two party arbitration. The benefit the Commission saw in that order was for end-users to have larger local calling areas. The Commission also recognized the disorder that could ensue from all carriers defining their own local calling areas for purposes of reciprocal compensation.

Second, the rate charged an end user is a separate issue from the rate paid for reciprocal compensation. The language proposed by SBC does not attempt to define AT&T's local calling areas for purposes of the rates it charges its end users. Our

resolution of this dispute does not directly determine the configuration of AT&T's LCAs for its end-users.

Finally, AT&T's proposal has the potential to lead to absurd results. If AT&T chose to make the entire State of Illinois a local calling area for its customers, it could. AT&T, however, could not assume that SBC, and for that matter Verizon, would treat all of AT&T's traffic as local for purposes of reciprocal compensation.

The Commission, therefore, adopts the following language for Section 21.2.7:

> "Local Calls," for purposes of intercarrier compensation, is traffic where all calls originate and terminate within the same common local and common mandatory local calling area, i.e., within the same of different Illinois ILEC Exchange(s) that participate in the same common local or common mandatory local calling area approved by the Illinois Commission. Local Calls must actually originate and actually terminate to End Users physically located within the same common local or common mandatory local calling area. The Parties agree that, notwithstanding the classification of traffic under this Article, either Party is free to define its own "local" calling area(s) for purposes of its provision of telecommunications services to its end users but as for reciprocal compensation purposes the local calling area is determined by state commission.

Intercarrier Compensation Issue 2b

How should ISP-bound, FX traffic be compensated pursuant to the rules established by the FCC in the ISP Remand Order?

AT&T's Position

AT&T witnesses Finney-Schell-Talbott testified that in its ISP Remand Order, the FCC reaffirmed its previous conclusion that traffic delivered to an ISP is predominantly interstate traffic, subject to FCC jurisdiction under §201 of the Act. In its ISP Remand Order, the FCC further established an intercarrier compensation mechanism for the exchange of such traffic.

FX (foreign exchange) and FX-like traffic consists of two categories of traffic: voice and Internet Service Provider (ISP)-bound traffic, and each category must be addressed separately. (Voice traffic is all non-ISP-bound traffic and may include calls that carry data, e.g., facsimile, but are otherwise indistinguishable from voice traffic.) ISP-bound traffic, including ISP-bound FX-like traffic, is subject to the FCC's intercarrier compensation mechanism and is not subject to the jurisdiction of state commissions. On the other hand, intrastate voice FX-like traffic is subject to the jurisdiction of the state commissions and the reciprocal compensation rates they establish for the exchange of such traffic.

AT&T's witnesses testified that SBC's own tariff supports AT&T's position that ISP-bound FX calling is jurisdictionally interstate. AT&T's FX-like arrangement competes with SBC Illinois' Internet Transport Access Service ("ITAS"). SBC offers ITAS in its Ameritech Operating Companies Tariff F.C.C. No. 2, Section 20.

Thus, SBC offers ISPs an access service that includes (1) the provision of local telephone numbers in each local calling area, (2) the use of SBC's local switches to collect the calls, and (3) transport from SBC's local switches to the ISP customer's location. It is important to note that the ISP customer is not physically located in each local calling area. In fact, the ISP could well be physically located at only one location within a LATA. If an AT&T end user subscribes to an ISP using SBC's ITAS and dials the local telephone number SBC has assigned to the ISP, AT&T will pay reciprocal compensation to SBC based on the originating and terminating NPA-NXXs -- even though the ISP subscriber is not physically located in the local calling area. It is instructive that, as noted, SBC filed its ISP ITAS service offering in its Interstate Tariff, not as an intrastate tariff here in Illinois.

AT&T's witnesses further stated that recent Commission precedent supports AT&T's position – and SBC's business decision -- that ISP-bound FX calling is jurisdictionally interstate. In Essex Telcom, Inc., v. Gallatin River Communications, L.L.C., Docket 01-0427, it was held that "with the adoption of the [FCC's] ISP Remand Order, the Commission has been divested of jurisdiction to determine compensation issues as they relate to ISP bound calls." The Commission restated this finding in the Global NAPs Arbitration with Verizon. (Docket 02-0253)

AT&T therefore recommends that the Commission should confirm that all ISP-bound traffic, including FX and FX-like traffic, is subject to the FCC's jurisdiction and the intercarrier compensation mechanism set forth by the FCC in the ISP Remand Order. The Commission should find that, since SBC has opted into the rate caps specified by the FCC in the ISP Remand Order, all ISP-bound traffic, including ISP-bound FX and FX-like traffic, exchanged between AT&T and SBC will be subject to the intercarrier compensation mechanisms specified in the ISP Remand Order.

SBC's Position

SBC's position on this issue assumes the Commission will resolve Intercarrier Compensation Issue 2.c by reaffirming, as Staff recommends, its well-established rule that calls that terminate in a different local calling area than the local calling area where the calling party is located are not subject to reciprocal compensation even though they are "FX calls," i.e., calls to a phone number that, because of its first three digits (NXX) appears to the network to be in the same local calling area as the calling party. Having so ruled on Issue 2.c, the Commission should reject AT&T's attempt to carve out, in Issue 2.b, an exception for calls to Internet Service Providers ("ISPs"). That is, the Commission should leave intact the current regime in Illinois, whereby reciprocal compensation does not apply to FX calls generally, including calls to ISPs with FX numbers.

AT&T's argument that the FCC's ISP Remand Order somehow entitles it to compensation for terminating ISP-bound FX calls fails for several reasons. First and foremost, the ISP Remand Order was not intended to create a compensation obligation where none previously existed. Quite the contrary, it ended a compensation obligation that previously existed – namely, the reciprocal compensation obligation that had previously applied to ISP-bound traffic. In order to avoid a sudden disruption to business plans that were based on the assumption that reciprocal compensation would continue to apply to ISP-bound traffic, the FCC established an interim regime that allows for compensation on such traffic. AT&T's attempt to leverage the FCC's interim regime into a rationale for imposing compensation on traffic that must otherwise be exchanged on a bill and keep basis under this Commission's rules must be rejected.

Staff's Position

Staff recommends the Commission adopt SBC's proposed language for Article 21, Sections 21.2.1, 21.2.7 and 21.2.8 which requires the parties to exchange ISP-bound FX or FX-like traffic at the same rates that the Commission orders for non-ISP-bound FX or FX-like traffic i.e., the Commission order bill and keep for non-ISP-bound FX or FX-like traffic.

Commission Analysis and Conclusion

This proceeding is brought before us pursuant to Section 252(c). We are directed by that Section to ensure that our resolution of the issues brought before us are consistent with the "requirements of section 251, including the regulations prescribed the [FCC] pursuant to section 251." Reciprocal compensation is required under Section 251(b)(5) and interpreted by the FCC in the ISP Remand Order and, hence, our arbitration decision in this decision must comply with that FCC Order.

We do not read the ISP Remand Order to mandate that we cannot arbitrate this issue because we have been preempted, as suggested by AT&T. The ISP Remand Order found that state commissions may not impose their own reciprocal compensation regime for ISP bound traffic. That power has been preempted by the FCC. Our sole remaining role in this matter is to enforce FCC decisions.

In the ISP Remand Order, the FCC stated that where a state commission had instituted a bill and keep arrangement for ISP bound traffic, that arrangement would remain in place. In Illinois, we have repeatedly held that FX-like traffic is not subject to reciprocal compensation, but rather we have instituted a bill and keep regime. Global-Ameritech Arbitration Order at 15; Level 3 Arbitration Order at 9-10; TDS Metrocom Arbitration Order at 39. In our limited role of upholding FCC orders concerning ISP bound traffic, we conclude that ISP bound FX traffic will continue to be subject to bill and keep. To do otherwise would contradict the FCC's stated policy goals to reduce carriers' reliance on carrier to carrier payments.

Intercarrier Compensation Issue 2c

AT&T Issue: Should non-ISP-bound FX-like traffic be compensable pursuant to reciprocal compensation provisions of Section 251(b)(5) of the Act?

SBC Issue: Should local calls be defined as calls that must originate and terminate to End Users physically located within the same common or mandatory local calling area?

AT&T's Position

AT&T witnesses Finney-Schell-Talbott presented extensive testimony addressing whether the Commission should continue to require SBC to pay AT&T reciprocal compensation for non-ISP-bound FX calls. Indeed, today, AT&T and SBC treat non-ISP-bound FX-like traffic as local calls for purposes of paying and receiving reciprocal compensation. More significantly, SBC offers FX service as local exchange service (not an access service and not a toll service) in its Tariff. (Illinois Bell Telephone Company, Telecommunications Services Tariff, Ill. C.C. No. 20, Part 4, Section 3, 1st Revised Sheet No. 1, ¶ 1.1.) Moreover, under the FCC's long-standing Separations policies, all retail FX revenue is deemed to be basic local service revenue (47 CFR 36.212(B)). Thus, today, AT&T and SBC pay one another Commission-established reciprocal compensation rates to terminate these calls, and SBC treats non-ISP bound FX service in the exact same fashion as its other local services. The major issue here, then, is whether there is a change justifying SBC's attempt to force AT&T to terminate these calls for free.

AT&T discussed SBC's proposal in context with its – and its predecessor, Ameritech's -- seven year campaign to deprive CLECs of reciprocal compensation revenue for terminating calls to Internet Service Providers ("ISPs"). The first step was taken by Ameritech in 1997, when it unilaterally declared that it would stop paying reciprocal compensation to CLECs for calls to ISPs. The Commission (and all other commissions in Ameritech's five state region), and later the courts, uniformly rejected this action.

SBC then switched its focus to the FCC by seeking preemption of the states so that it could reduce its reciprocal compensation payments to CLECs. SBC prevailed; the FCC preempted the states' jurisdiction over ISP calling. However, the FCC also required that SBC could only reduce its reciprocal compensation payments if it agreed to a corresponding reduction in its lucrative revenues from wireless providers and other carriers that originate more traffic than they terminate.

Now, SBC has again switched its focus. SBC is back in the states, with new theories, but with the same objective: Commission authorization to force AT&T to terminate non-ISP-bound FX calls for free.

In Section 21.2.7 of the ICA, SBC proposes to define "local calls" as calls that "actually originate and actually terminate to end users physically located within the

same common local or common mandatory [legacy SBC] local calling area within operating areas where SBC-Illinois is the ILEC." SBC then proposes that such definition apply only for purposes of determining a party's reciprocal compensation obligations. SBC's language is squarely aimed at eliminating SBC's reciprocal compensation obligations for traffic originating on its network and terminating to AT&T's FX-like arrangements.

AT&T urged the Commission to reject SBC's proposal and its related proposed language in Section 21.2.8. SBC's proposed language in Section 21.2.8 provides that if the calling or called party is physically located outside the legacy SBC local calling area of the exchange to which the number is assigned, the call is either Feature Group A ("FGA") or FX Traffic, and such calls are not Local Calls for intercarrier compensation and are not subject to local reciprocal compensation. Thus, if SBC loses its argument regarding the definition of Local Calls for reciprocal compensation purposes (Section 21.2.7), the language in Section 21.2.8 would still allow SBC to avoid paying reciprocal compensation for such calls, because such calls would be FX or FGA and not subject to reciprocal compensation.

AT&T reiterated that ISP-bound traffic is subject to the compensation mechanism established by the FCC in its ISP Remand Order. Therefore, the Commission will be considering the applicability of SBC's proposed definitions in Sections 21.2.7 and 21.2.8 as they relate to non-ISP-bound or voice FX traffic. It is AT&T's position that under the FCC's ISP Remand Order, all traffic is subject to reciprocal compensation unless the traffic falls within the exemptions established in Section 251(g) of the Act. AT&T offered substantial testimony explaining that Voice FX-like traffic does not fall within the Section 251(g) carve out.

Further, AT&T demonstrated that if SBC's proposed definition were adopted and applied even-handedly to all services where customers do not physically reside in the rate center associated with the NPA-NXX code (as opposed to a singular FX exception that SBC believes benefits it) the impact on the industry would be far reaching and very costly. In fact, AT&T's testimony stated that there are no concrete, workable solutions to implement SBC's definition across all services.

AT&T witnesses' Finney-Schell-Talbott's reply testimony rebutted Staff witness Dr. Zolnierek's claim that AT&T's proposal is inconsistent with the FCC's ISP Remand Order. According to AT&T, Dr. Zolnierek's reading of the ISP Remand Order ignores the fact that the Section 251(g) carve out applies to access services, not end user services like FX-like calling. AT&T also showed that its proposal is workable, and that it would be inappropriate to single out one service (FX-like calling) for disparate (and patently discriminatory) treatment. AT&T also responded to Staff's claim regarding the results of the Virginia arbitration decision, noting that AT&T's witnesses had first-hand knowledge of that case.

SBC's Position

This Commission has repeated ruled that a call that originates in one local calling area and terminates in another is not subject to reciprocal compensation, even if the called party has FX service, which makes the call appear "local" to the network, based on the calling party's and the called parties' phone numbers. AT&T urges the Commission to overrule those precedents based on a supposed change in law effected by the FCC's ISP Remand Order. But the Commission has reaffirmed that reciprocal compensation does not apply to FX traffic no less than three times since the FCC issued the ISP Remand Order, and has considered and rejected the same arguments that AT&T is making. The Commission should, as Staff recommends, reaffirm its established precedents on this issue one more time.

Staff's Position

The Commission has consistently ruled in recent orders that FX or FX-like traffic is subject to bill and keep arrangements. This traffic has undeniable characteristics of interexchange traffic, yet, neither party proposes to treat such traffic as traditional toll traffic. Under such circumstances, SBC's proposal to simply waive switched access charges, charges that would normally apply to the exchange of interexchange traffic, should be accepted as the more reasonable proposal. AT&T's proposal to institute reciprocal compensation charges should be rejected. The Commission should accept SBC's proposal to determine Section 251(b)(5) application based on the geographic end-points of the traffic and its proposed language for Sections 21.2.1, 21.2.7 and 21.2.8.

Commission Analysis and Conclusion

This issue has been before us on several occasions and very recently in the Global NAPS Arbitration. Docket 02-0253, Order on Rehearing at 17. In that Order we stated:

> Since we will not require either reciprocal compensation payments or access charges, the allocation of cost responsibility for virtual NXX traffic remains before us. In the Essex Telecom Order, the Commission instructed the parties "to adopt a bill-and keep regime for FX-like calls between the two systems." *Id*. at 25. We will do the same here. Under bill-and-keep, which is authorized under the Federal Act[36], Verizon will retain its local service revenues and Global will keep whatever it is able to charge for a virtual NXX. This arrangement is consistent with our determination, above, that each carrier will be responsible for its own transport to and from the parties' POI. It is similarly consistent with the Commission's directive in the Global-Ameritech Arbitration Order, at 15, that "each party should bear its own costs on its side of the POI for FX and FX-like traffic." As Verizon recognizes, it will incur no more additional cost for transporting a virtual NXX call to the POI than it does for

> transporting any other Global bound local call to the POI[37], and we have already found that such additional cost will be trivial.

Neither AT&T nor the FCC in its ISP Remand Order has given us reason to change our decision in this arbitration. Similarly the Virginia Arbitration Decision does not provide support for AT&T's decision. In the Virginia Arbitration Decision, the FCC did not rule that the CLEC was correct, but rather that Verizon's proposal, which is similar to SBC's here, was unworkable. Our Staff indicates that in this proceeding it believes SBC's proposal is workable.

Moreover, the FCC stated that, if CLECs were abusing NPA-NXX allocations, the state commissions could correct that through their numbering authority. Because of the value of FX-like service to end-users, we will not direct AT&T to stop offering FX-like services through our numbering authority. We will instead find, as we have consistently, that such services are not subject to local reciprocal compensation. Accordingly, we adopt SBC's language for Section 21.2.8 which specifies a bill and keep arrangement for FX-like calls.

Intercarrier Compensation Issue 2d

If the ICC adopts SBC's proposal for FX-like traffic, under Issue 2, are specific recording process warranted for FX traffic?

Intercarrier Compensation Issue 2e

If the ICC adopts SBC's proposal for FX-like traffic, under Issue 2, should there be specific audit provisions in Article Compensation for the tracking and exclusion of Foreign Exchange traffic?

AT&T's Position

AT&T witnesses Finney-Schell-Talbott testified that this issue only needs to be decided if the Commission adopts SBC's proposal forcing AT&T to separately track FX-like traffic so that SBC can cease paying AT&T reciprocal compensation for terminating SBC customer calls. Therefore, if the Commission opts to retain the status quo (with SBC and AT&T paying one another for the cost of terminating FX-like traffic), then this issue is moot.

SBC is proposing that the terminating carrier would have to segregate and separately track FX (SBC) and FX-like (AT&T) traffic and retain written records of all FX/FX-like ten-digit FX/FX-like telephone numbers for which "bill and keep" applies for two years from the date the FX/FX-like telephone numbers were assigned. SBC's language would require the parties to exchange monthly NXX level summaries of the minutes of use to FX/FX-like telephone numbers on its network.

Given these impacts, AT&T's position is that SBC's proposal is, on its face, unreasonable. While SBC may be able to identify its FX customers through the

Universal Service Order Code ("USOC") it assigns to such service and track terminating minutes of use to such numbers, AT&T cannot. AT&T reiterated its point (made in earlier testimony addressing Issue 2(c)) that AT&T's FX-like arrangement is not a service but a non-chargeable service provisioning option. Consequently, AT&T has no reason to, and does not, separately identify FX-like customers or the traffic directed to FX-like customers within its systems and processes, and it cannot do so without incurring significant expense.

AT&T strongly objected to being required to incur the significant expense that would be required to identify such customers and to segregate their usage. AT&T provided two main reasons why the Commission should not order such burdensome tracking and the monthly exchange of usage data between the Parties.

First, with respect to ISP-bound FX traffic, for the reasons stated previously, such traffic is not subject to the Commission's jurisdiction. This Commission therefore cannot order special tracking for this traffic. Moreover, under current FCC rules, such traffic is compensated in the exact same manner as Section 251(b)(5) traffic; therefore, special tracking would serve no useful purpose. Further, since SBC has elected to opt into the rate caps in the FCC ISP Remand Order, ISP-bound FX traffic will be identified and compensated in accordance with the ISP Remand Order. In its ISP Remand Order, the FCC adopted a rebuttable presumption that traffic exchanged between LECs that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic and is subject to the compensation mechanism the FCC established in the ISP Remand Order. *ISP Remand Order,* par. 8. The FCC specifically said it was establishing this rebuttable presumption "[i]n order to limit disputes and costly measures to identify ISP-bound traffic." Id. at par. 8. Thus, special tracking for ISP-bound traffic would serve no useful purpose in particular now that SBC has opted into the rate caps in the ISP Remand Order.

Second, with respect to voice FX traffic, AT&T proposes that such traffic be compensated in the same manner as all other section 251(b)(5) traffic (Issue Intercarrier Compensation 2(c)); therefore, special tracking would serve no useful purpose. If the Commission does not agree with AT&T under Issue Intercarrier Compensation 2(c), however, then the Commission should nevertheless refrain from ordering a costly and burdensome tracking mechanism for what AT&T believes to be a very small volume of traffic. The costs to develop and track such a small volume of traffic would be many times greater than any compensation that SBC would receive by being able to terminate its customers calls on AT&T's network for free. If the Commission nevertheless believes that separate tracking should be implemented for voice FX traffic, then SBC should be required to compensate AT&T for the costs to develop and administer such tracking, as SBC would be the sole beneficiary of such tracking.

According to Messers Finney-Schell-Talbott, AT&T's costs for implementing such a tracking mechanism are significant. This is because a decision forcing AT&T to develop such a tracking mechanism would have a significant impact on AT&T's support systems and processes. Today, AT&T does not identify or maintain a separate record

of FX-like customers and numbers, and does not segregate FX-like traffic or track it separately. AT&T would have to modify its End User Ordering System, Access Message Processing System ("AMPS") and related support processes and systems to enable it to identify its FX-like customers and suppress reciprocal compensation billing for non-ISP-bound FX-like calls determined to be "non-local" based on the FX-like customer's physical location. The reciprocal compensation charge would be applied only if the originating telephone number and the geographic location of AT&T's FX-like customer are in the same tariffed local calling area. Otherwise, reciprocal compensation would not be billed.

AT&T presented testimony showing in detail the specific system changes that would have to be made in its end user ordering and carrier access billing systems. AT&T further showed that these changes would be extremely costly to implement. AT&T's testimony contained a conservative estimate of the changes in the End User Ordering Systems, with a one-time systems development cost of $500,000 and the changes for the AMPS and CRANE systems are estimated to have a one-time development cost of $3 million to $4 million. In addition, AT&T estimates that it would have a recurring monthly cost of $325,000.

Further, AT&T noted that given the pendency of the FCC's Intercarrier Compensation NPRM, any change in how traffic is rated is likely to be short-lived in that the comprehensive changes being examined by the FCC in that Docket could completely supersede a state imposed rating system. In these circumstances, instead of requiring the traffic recording capabilities that SBC now proposes, the Commission should allow the parties to use a Percentage of Voice FX Usage Factor (PVFX) to identify non-ISP bound FX/FX-like traffic. Today, SBC and AT&T use similar factors such as PIU (Percent Interstate Usage) and PLU (Percent Local Usage) in their billing processes, and are familiar with the development and usage of such factors.

AT&T pointed out that SBC also proposes use of a PVFX factor, but only by mutual agreement. As explained above, other than incurring significant one-time systems development costs and significant monthly recurring costs, AT&T has no practical alternative to use of a PVFX Factor to identify its monthly non-ISP-bound FX-like terminating traffic. SBC should not be permitted to block use of a PVFX factor, thereby forcing AT&T to implement a costly and burdensome tracking mechanism for what would be a very small volume of traffic.

AT&T Exhibit 2.6 provides a Factor development methodology that AT&T could use to develop a PVFX Factor. Since SBC is proposing segregating and tracking for all FX traffic, AT&T does not expect that SBC would have a problem either (1) identifying its actual non-ISP-bound FX terminating minutes of use, or (2) developing a PVFX factor for its non-ISP-bound (voice) FX terminating minutes of use. Either arrangement would be acceptable to AT&T. (AT&T Ex. 2.0, pp. 130-133).

AT&T therefore recommends, if the Commission decides to adopt SBC's local call and/or FX definitions, and determines that non-ISP-bound (voice) FX and FX-like

traffic is subject to "bill and keep", that the Commission should direct each party, at its option, to select one of the following methods for identifying its terminating non-ISP-bound (voice) FX or FX-like traffic:

(1) Identify the actual monthly non-ISP-bound (voice) FX or FX-like minutes of use based on AMA call records; or

(2) Develop a PVFX Factor based on traffic studies, retail sales of FX lines, or any other reasonable method of estimating the non-ISP-bound FX or FX-like traffic; or

(3) Develop a PVFX Factor using the methodology set forth in AT&T Exhibit 2.6.

In addition, and consistent with the foregoing, AT&T recommends that the Commission replace SBC's proposed language in Sections 21.7.3 and 21.7.3.1 with the following language:

21.7.3 Each Party, at its option, may select one of the following methods for identifying its terminating non-ISP-bound (voice) FX or FX-like traffic:

(1) Identify the actual monthly non-ISP-bound FX or FX-like minutes of use based on AMA call records; or

(2) Develop a PVFX Factor based on traffic studies, retail sales of FX lines, or any other reasonable method of estimating the non-ISP-bound FX or FX-like traffic; or

(3) Develop a PVFX Factor using the methodology set forth in AT&T Exhibit 2.6 in ICC Docket No. 03-0239.

21.7.3.1 If a PVFX Factor is used, such Factor shall be updated annually.

AT&T witnesses Finney-Schell-Talbott testified that Intercarrier Compensation Issue 2e only needs to be decided if the Commission were to adopt SBC's proposal forcing AT&T to separately track FX-like traffic so that SBC can cease paying AT&T reciprocal compensation for terminating SBC customer calls. Therefore, if the Commission opts to retain the status quo (with SBC and AT&T paying one another for the cost of terminating ISP-like traffic), then this issue is moot.

Even if the Commission were to adopt SBC's position forcing AT&T to separately track FX-like traffic, AT&T recommended that the Commission should not adopt SBC's draconian audit provision. If AT&T is unable to identify FX-like traffic, SBC should not have free reign to go through AT&T's records to attempt to do the same. An audit provision is doubly unnecessary now that SBC has opted into the FCC ISP Remand Order. Now ISP-bound FX traffic is required to be identified and compensated in

accordance with the ISP Remand Order, and again an audit of all of AT&T's FX-like traffic would serve no useful purpose. AT&T believes the audit provisions in Article 1, General Terms and Conditions, Section 32, provide the parties with adequate audit rights and remedies, and that separate, audit provisions for non-ISP-bound FX-like traffic are simply not necessary.

AT&T stated that SBC's audit proposal is not only unnecessary, it is also unduly intrusive and burdensome to implement. SBC's audit language in Sections 21.7.1, 21.7.1.1 and 21.7.2 specifically requires identification of all FX ten-digit telephone numbers and segregating and tracking of all FX traffic. Section 21.7.2 provides for " a semi-annual audit of the full ten (10) digit FX Telephone Numbers and minutes of use to those numbers in order to ensure the proper Billing and Keeping of FX traffic consistent with this section." Thus, the terminating carrier would have to segregate and separately track the applicable FX and FX-like traffic and retain written records of all FX/FX-like ten-digit telephone numbers for which "bill and keep" applies for two years from the date the FX/FX-like telephone numbers were assigned. SBC's language would require the parties to exchange monthly NXX level summaries of the minutes of use to FX/FX-like telephone numbers on its network. (AT&T Ex. 2.12, p. 34).

If the Commission opts to agree with SBC's proposal to cease paying AT&T reciprocal compensation for terminating SBC customer-initiated FX calls, AT&T offered a more reasonable alternative than SBC's audit language. As was discussed under Issue Intercarrier Compensation 2(d), AT&T could use a sampling methodology to develop a percent FX-like factor that represents the estimated percentage of minutes of use attributable to either voice FX-like traffic or to all FX-like traffic, depending on the resolution of Issue Intercarrier Compensation 2(b). AT&T would use a statistically valid sampling method that provides a reliable result to develop the factor.

If AT&T's proposal is adopted, then SBC's audit language is not relevant and should not be adopted by the Commission, because it could be construed by SBC to require such data even when AT&T uses a factor approach such as what SBC itself proposes in Sections 21.7.3 and 21.7.3.1. Moreover, since SBC's audit language in SBC-proposed sections 21.7.1, 21.7.1.1, and 21.7.2 would not be applicable to AT&T, this would mean that SBC's proposed audit provisions in sections 21.7.2.1 and 21.7.2.2 are not necessary. The audit provisions in Article 1, General Terms and Conditions, Section 32, provide the parties with adequate audit rights and remedies, and separate audit provisions for FX and FX-like traffic are simply not necessary. Each party's rights are adequately protected in Section 32. Therefore, AT&T requested that the Commission reject SBC's proposed language in Sections 21.7.2.1 and 21.7.2.2.

SBC's Position

Because FX traffic is not subject to reciprocal compensation, the parties must have a method for keeping track of the FX traffic they terminate. SBC has proposed contract language that provides for a reasonable method to accurately track FX traffic, and AT&T, while opposing SBC's language, proposes no counter-language. The

Commission should reject AT&T's contention that SBC's proposal is too costly, as the arbitrators in a proceeding on the same issue in Texas did, and approve SBC's proposed language, as Staff recommends.

As Staff recommends, the Commission should approve SBC's proposal for audits of the FX tracking data that is the subject of Intercarrier Compensation Issue 2.d. Some audit provision is clearly necessary, and SBC's proposal is reasonable in all respects.

Staff's Position

Staff recommends that the parties have the opportunity to develop a mutually agreeable Percentage of FX Usage ("PFX") factor and companion audit and data retention language rather than actual measurement. However, Staff recommends that AT&T's overly general approach, which gives each carrier excessive flexibility in computing the PFX factor and lacks accountability controls, should be rejected. See AT&T Ex. 2.12 at 33 and 34. Staff proposes that the Commission order the parties to add the following language to SBC's proposed language for Sections 21.7.1, 21.7.1.1, 21.7.2, 21.7.2.1, 21.7.2.2, 21.7.3, and 21.7.3.1, with the following modifications:

First, the following language should be appended to SBC's proposed language for Article 21, Section 21.7.3:

> In the event the parties mutually agree to assign a Percentage of FX Usage (PFX), the parties may, upon mutual agreement, agree to modifications or alterations to the data retention and auditing provisions of Article 21, Sections 21.7, 21.7.1, 27.7.1.1, 21.7.2, 21.7.2.1, and 21.7.2.2.

Staff also proposes a new Section 21.7.3.2 which would read:

> Modifications or alterations to the data retention and auditing provisions in Sections 21.7, 21.7.1, 27.7.1.1, 21.7.2, 21.7.2.1, and 21.7.2 must be agreed upon in writing prior to usage of the PFX.

Commission Analysis and Conclusion

Given our decision to order bill and keep for FX-like traffic, we must decide how parties will track their FX and FX-like calls.

Similar to Staff, we are also confused by AT&T's assertion that it does not track FX-like customers. AT&T says that because it offers this option free of charge to its customers, it has no business need to track them. As Staff explains in its Initial Brief, however, FX-like customer arrangements require a special provisioning arrangement i.e., AT&T must deliver traffic to a destination that does not match the area to which the customer's telephone number is assigned.

Nevertheless, we are troubled by the expense that AT&T's insists it will incur if SBC's tracking method is imposed. Given the pendency of the FCC's Intercarrier Compensation NPRM, we are reluctant to impose such a costly requirement that could be very short-lived. SBC offers as an alternative to its tracking method the following:

> Alternatively, the Parties may mutually agree to assign a Percentage of FX Usage (PFX) which shall represent the estimated percentage of minutes of use that is attributable to all FX traffic in a given month.

We agree with AT&T that, at this time, this is a preferable method for determining the calls that will not be subject to reciprocal compensation. Hence, SBC's language that the parties must "mutually agree" is inappropriate.

SBC's proposed language for Sections 21.7.1, 21.7.1.1, 21.7.2, 21.7.2.1, 21.7.2.2, and 21.7.3 is denied. The ICA will state:

> 21.7.1 In order to ensure that FX Traffic is being properly segregated from other types of intercarrier traffic, the Parties will assign a Percentage of FX Usage (PFX) which shall represent the estimated percentage of minutes of use that is attributable to all FX Traffic in a given usage month.
>
> 21.7.1.1 The PFX, and any adjustments thereto, must be agreed upon in writing prior to the usage month (or other applicable billing period) in which the PFX is to apply, and may only be adjusted once each quarter. The parties may agree to use traffic studies, retail sales of FX lines, or any other agreed method of estimating the FX Traffic to be assigned the PFX.

Intercarrier Compensation Issue 4

AT&T Issue: What classes of traffic should be excluded from reciprocal compensation under this Article?

SBC Issue: Should Information Access traffic and Exchange Services for such access be defined as traffic exempted from reciprocal compensation?

AT&T's Position

SBC proposes to add language in Section 21.2.4 exempting from reciprocal compensation (1) Information Access traffic, and (2) any other type of traffic found to be exempt from reciprocal compensation by the FCC or this Commission. AT&T witnesses Finney-Schell-Talbott testified that SBC's proposed Information Access exemption is overly broad, and is simply another attempt by SBC to include language in the ICA that will allow it to argue that reciprocal compensation is not applicable to ISP-bound traffic or any other subset of Information Access traffic for which SBC does not want to pay compensation. Further, SBC's proposed language exempting "any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission"

would likely lead to disputes, and is unnecessary given the ICA's change of law provision in Section 1.3 of Article 1, General Terms and Conditions.

To avoid ambiguity or disputes regarding the types of traffic exempt from reciprocal compensation, AT&T proposes to add language clarifying the types of traffic that are exempted from reciprocal compensation, and specific language clarifying that "ISP-bound traffic …... is not exempted from 251(b)(5) reciprocal compensation." As the FCC expressly stated in its ISP Remand Order, all traffic is subject to reciprocal compensation unless it falls within the exceptions set forth in Section 251(g) of the Act; and the D.C. Circuit Court of Appeals, in ruling on an appeal of the ISP Remand Order, held that ISP-bound traffic is not subject to the Section 251(g) carve-out provision.

According to AT&T, SBC's proposed language, if adopted, would give SBC yet another reason to dispute and withhold payment of reciprocal compensation for ISP-bound traffic, even though it has opted into the FCC's rate caps. Specifically, SBC could argue that reciprocal compensation is not applicable to ISP-bound traffic under its language because ISP-bound traffic is one class of Information Access traffic. Thus, even if SBC is unsuccessful in (1) its attempt to limit reciprocal compensation to "local calls", which, as SBC defines such calls, excludes calls to/from FX and FX-like arrangements, including ISP-bound FX-like traffic, or (2) its attempt to include language in the ICA specifically establishing "bill and keep" as the compensation arrangement for FX and FX and FX-like traffic, including ISP-bound traffic, or (3) its argument that ISP-bound calls should "be compensated and billed in the same manner as "similarly dialed voice calls", SBC could still avoid payment of reciprocal compensation for ISP-bound traffic if the Commission were to adopt SBC's proposed language in Section 21.2.4 of the ICA exempting SBC from payment of reciprocal compensation for Information Access traffic. AT&T's language clarifying that reciprocal compensation applies to ISP-bound traffic is needed to avoid this result. (AT&T Ex. 2.0, pp. 139-142).

AT&T also contended that SBC's proposed language exempting from reciprocal compensation "any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission" is fraught with dangerous ambiguities. SBC's proposed language would likely lead to disputes, and it is unnecessary given the ICA's change of law provision in Section 1.3 of Article 1, General Terms and Conditions. If SBC's proposed language were adopted, SBC would doubtless argue that the Commission's finding in any arbitration or other proceeding that reciprocal compensation was not applicable to a particular service or services applied with equal force to this ICA. In fact, if SBC's language were adopted, the Commission's prior rulings would also be imported into this ICA. While it is likely that SBC would have participated in or will participate in such other proceedings (such as ICA arbitrations with other CLECs), it is highly unlikely that AT&T has participated in or will participate in any arbitration proceeding other than its own. Therefore, irrespective of how the issues are structured or argued by SBC and the other parties to another case, and despite any agreements that SBC and the other party may reach to resolve issues in these other proceedings, AT&T would risk being bound by the outcome. This is patently unfair. Further, there is no need for such draconian language because the change in law

provision in Article 1, Section 1.3, allows either party recourse in the event of a change in applicable laws.

Thus, AT&T requested that the Commission reject SBC's proposed language in Section 21.2.4 that would exempt "any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission" from reciprocal compensation under this ICA.

SBC's Position

FCC Rule 701(b) explicitly exempts information access traffic from reciprocal compensation, and the Agreement should therefore do so as well. The Agreement should also exempt from reciprocal compensation certain traffic involving ported numbers, because such traffic is not exchanged between two carriers' networks, as traffic must be in order to be subject to reciprocal compensation. Finally, the Agreement should provide that any other category of traffic that this Commission or the FCC holds exempt from reciprocal compensation is exempt as between AT&T and SBC.

Staff's Position

Staff took no position on this issue.

Commission Analysis and Conclusion

AT&T does not address SBC's language relating to calls to ported numbers in its testimony or briefs. AT&T has, therefore, waived this issue and SBC's language related to ported numbers will be included in Section 21.2.4.

In the parties agreed to language for Section 21.2.2, "ISP-bound Traffic" is defined and in Section 21.5, the compensation and billing for ISP-bound Traffic is laid out. Reference Section 21.5 should alleviate AT&T's concern that SBC will attempt to withhold payment of reciprocal compensation for ISP-bound traffic. SBC's language tracks the FCC's regulations and we adopt it with the clarification that if the regulations change, so should the ICA. If the FCC or the Commission institutes more exemptions from Section 251(b)(5), those would need to be handled through the ICA's change of law provisions.

Accordingly, the language that shall be included in Section 21.24 is:

> The compensation arrangements for Section 251(b)(5), as defined in 47 C.F.R. § 51.701(b)(1) and subject to change in accordance therewith, are not applicable to (i) Exchange Access traffic, Information Access traffic, or Exchange Services for such access (ISP-bound Traffic shall be compensated and billed in accordance with Section 21.5 as agreed to by the parties) (ii) traffic originated by one Party on a number ported to its own network that terminates to another number ported on that same

> Party's network or (iii) any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission and subject to the Change in Law provisions of this agreement Section 1.3 of Article 1, General Terms and Conditions. All Exchange Access traffic shall continue to be governed by the terms and conditions of applicable state, federal and NECA tariffs.

Intercarrier Compensation Issue 7

If the originating party passes CPN on less than 90% of its calls, should those calls passed without CPN be billed as intraLATA switched access or based on a percentage local usage ("PLU")?

AT&T's Position

The parties disagree on how to determine the jurisdiction of traffic sent without calling party number ("CPN") information. AT&T and SBC use this information to ascertain whether calls are subject to access charges or reciprocal compensation. Generally speaking, the parties agree on how the calls will be jurisdictionalized if the percentage of calls passed with CPN is 90% or greater, but disagree on what happens if the percentage of calls passed with CPN drops below 90%. As long as the percentage of calls passed with CPN is 90% or greater, calls passed without CPN will be billed as either local or intraLATA toll in direct proportion to the percent local usage ("PLU") factor determined in accordance with Section 21.15.1. However, if the percentage of calls passed with CPN drops below 90%, SBC proposes that the terminating party provide written notice to the originating party that the percentage has fallen below 90%. The noticed party will then have the succeeding month to correct the issue. Under SBC's proposal, if the percentage of calls in the third month is still below 90%, all calls passed without CPN will be billed at intraLATA access charges. On the other hand, AT&T proposes that if the percentage of calls passed without CPN drops below 90%, the terminating party will so inform the originating party and the parties will coordinate and exchange data as necessary to determine the cause of the failure and to assist in its correction. However, under AT&T's proposed language, calls passed without CPN would continue to be billed as either local or intraLATA toll in direct proportion the percent local usage ("PLU") factor, whereas under SBC's proposed language, all such calls would be billed at access rates.

According to AT&T, this issue does not arise because of any fundamental disagreement on whether CPN should be passed between the carriers; AT&T agrees that CPN should be passed wherever possible. All AT&T switches provide CPN on all calls where AT&T has control over provision of CPN. AT&T's business operations and processes rely on this information just as much as SBC's do. However, AT&T (and SBC) should not be punished for circumstances beyond their control. (AT&T Ex. 2.0, pp. 154-155).

AT&T explained in its testimony what circumstances are, indeed, beyond either carrier's control. AT&T and SBC have no control over the lack of CPN when business

customers use older customer premise equipment ("CPE") that prevents CPN passage. For example, older multi-line business CPE is unable to record CPN mechanically. Therefore, a new entrant such as AT&T that has a disproportionate share of business customers may be disproportionately affected by lack of CPN information through no fault of its own. Accordingly, AT&T's proposed language states that the parties will coordinate and exchange data as necessary to determine the cause of the CPN failure (or shortfall) and to assist in its correction, but it does not require the originating carrier to pay access charges on all of the calls passed without CPN, which SBC's language would require. AT&T believes that in the absence of CPN information, the jurisdiction of the traffic should have a basis in fact, i.e., the PLU factor, rather than an arbitrary designation of all such calls as toll traffic which is subject to access charges. (AT&T Ex. 2.0, pp. 155-156).

SBC claims that this provision will protect it against some unscrupulous CLEC that opts in to the AT&T ICA and overrides CPN so it can slip toll traffic in as local traffic and pay the lower reciprocal compensation rate instead of the applicable higher access charges. As was stated above, AT&T agrees that CPN should be passed wherever possible. All AT&T switches provide CPN on all calls where AT&T has control over provision of CPN, and AT&T's business operations and processes rely on this information just as much as SBC's do. AT&T should not be penalized for the actions that SBC fears some other CLEC might take. (AT&T Ex. 2.0, p. 156).

This issue was recently addressed by the FCC. It was a WorldCom issue in the Virginia Arbitration proceeding. In that proceeding, as in this proceeding, Verizon and WorldCom agreed that they would exchange CPN data for at least 90% of the calls but disagreed on what should happen when a party passes CPN information on less than 90% of its originating calls. Verizon proposed to charge access charges for all traffic below the 90% CPN threshold, which is less onerous than SBC's proposal in this case. WorldCom proposed that the parties use the PLU factors to jurisdictionalize the traffic below 90%. The FCC adopted WorldCom's proposal. The FCC said it adopted WorldCom's proposal:

> because it offers a reasonable solution to address those situations in which the parties are unable to pass CPN on 90% of their exchanged traffic. Other than indicating concern about unnamed competitive LECs 'stripping off' CPN to receive reciprocal compensation for a call subject to access charges, Verizon offers no real criticism of WorldCom's proposal. However sympathetic we may be to Verizon's concerns, we note that less drastic measures are available to it (i.e., filing a complaint with the Virginia Commission.) We decline to burden WorldCom merely because of the potential for unlawful behavior by other competitive LECs.

AT&T therefore requested that the Commission reject SBC's even more draconian position and instead adopt AT&T's proposed language for Section 21.3.4.

SBC's Position

Standard telephone industry practice requires carriers to pass along the calling party number (CPN) for calls originating on their networks to the carriers that terminate the calls. This information is critical for the purposes of determining whether calls are local, intraLATA, or interLATA so that appropriate charges can be applied to them. SBC proposes that both companies be held to a standard of providing CPN information for no less than 90% of the calls they deliver. If this standard is not met, the terminating carrier should have the option to bill the calls without CPN at its interstate switched exchange access service rate. This arrangement is reasonable, and ensures that a party cannot systematically strip CPN from the calls it delivers in order to reduce its financial obligation to the receiving carrier.

Staff's Position

Staff took no position on this issue

Commission Analysis and Conclusion

CPN allows a receiving carrier to determine whether the call is local and subject to reciprocal compensation or subject to access charges. Generally, the parties agree on how the calls will be jurisdictionalized if the percentage of calls passed with CPN is 90% or greater, but disagree on what happens if the percentage of calls passed with CPN drops below 90%. The parties agree that when 90% or more of the traffic either carrier delivers to the other contains CPN, the traffic without CPN will be billed as local or intraLATA toll in direct proportion to the percent local usage ("PLU") calculated in accordance with section 21.15.1.

SBC proposes that if 10% or more of the traffic either party delivers to the other lacks CPN, the delivering party would be allowed one month to correct the excessive amount of traffic without CPN. If the party fails to correct the excessive number of calls without CPN within one month, it will be charged terminating access rates for the traffic it continues to deliver without CPN. AT&T, on the other hand, proposes that in the event that a party exceeds the 10% threshold, the parties would bill that traffic without CPN in proportion to the PLU. AT&T proposes that the parties enter a period of data exchange and correction to address the issue.

SBC argues that its position is necessary, because otherwise CLECs could suppress the CPN on calls to avoid paying access charges. SBC provides no support to indicate that AT&T has done this. The appropriate avenue for SBC to address this is through the Commission's complaint process, rather than setting arbitrary thresholds. We do not agree that a carrier should be automatically punished for a situation that may be beyond its control.

SBC does raise the valid point that under AT&T's proposal there is no incentive to correct the situation. Hence, if the situation continues for a period greater than 3

months, the terminating carrier will have the right to initiate formal proceedings at the Commission. In the course of that proceeding, any perceived failure or refusal to cooperate in the production of data will be weighed against the party controlling the data. Depending on the outcome of that proceeding, the Commission may be persuaded in future proceedings to institute a more draconian solution. Accordingly, we adopt AT&T's proposed language with the following additional clause:

> . . . to assist in its correction. After notice is received, if the originating Party remains out of compliance for a period 90 days or is unable to remain in compliance for 90 days, the terminating Party has the right to initiate a complaint with the Illinois Commerce Commission.

Intercarrier Compensation Issue 8(b)

Do AT&T's switches meet the requirements of 47 C.R.F 51.711(a)(3), such that SBC shall compensate AT&T for termination at the tandem rate? Should AT&T be entitled to a single rate element which includes the tandem rate element, even though the tandem may not be used.

AT&T's Position

This issue will determine the rate at which SBC will continue to compensate AT&T for traffic that AT&T terminates on behalf of SBC. AT&T noted that today SBC compensates for termination at a tandem rate. AT&T argued that it is justified in continuing to charge the tandem switching rate specified in AT&T's proposed language for Section 21.4.5, or the tandem serving and end office switching rate elements specified in SBC's language in Sections 21.4.3.1, 21.4.3.2 and 21.4.4, because AT&T's switches serve a geographic area comparable to the area served by SBC's tandem switches, which is the standard specified in 47 CFR 51.711(a)(3).

SBC's position is that "AT&T must demonstrate that it (i) deploys a switch and (ii) deploys plant and has at least 3 end user customers in at least 60% or more of the local calling areas that subtend an SBC tandem" in order to charge SBC the tandem switch rate for the termination of SBC's traffic. AT&T contended that SBC's position is not consistent with 47 C.F.R. § 51.711(a)(3) and should be rejected.

According to AT&T, the FCC regulations recognize that there may be parity between a CLEC's end office switch and an ILEC tandem switch. They provide that when the CLEC's switches provide comparable geographical coverage to the ILEC's tandem switches, the tandem rate should apply to the termination of traffic through those CLEC switches. The specific regulation, set forth in, 47 C.F.R. § 51.711 (a)(3), states:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate

> for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

AT&T noted that the FCC's tandem rate rule recognizes that while new entrants may adopt network architectures that differ from those of incumbents, the new entrants nonetheless are entitled to be compensated for their costs of terminating traffic. Local Competition Order, par. 1090-1091. Indeed, in order to achieve the same scale economies as incumbents, CLECs must deploy switches that serve a comparatively broader geographic area, because they lack the concentrated, captive customer base that the incumbents enjoy. If SBC's interpretation of the FCC rule were adopted, CLECs would be hard pressed to achieve that customer base. SBC's proposal would have the effect of penalizing CLECs entering the market, because they would not yet have had sufficient time to build their customer bases to be "comparable" to the size and scope of the ILEC's. Indeed, without earning the higher tandem rate that compensates the CLEC for its costs of termination and for deploying an architecture designed to serve an area comparable to the incumbent's, CLECs would be unable to recoup their costs to terminate SBC's traffic and would thereby be precluded from entering certain markets altogether. Thus, the underlying point of the FCC's tandem rate rule is to establish a proxy for the interconnecting carrier's costs when it terminates a call from an ILEC to a CLEC customer.

AT&T witnesses Finney-Schell-Talbott stated that the FCC has specifically interpreted its own rules in its orders. Each time the outcome has clearly supported AT&T's position here. First, in the Local Competition Order, the FCC stated:

> We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated on a competing carrier's network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate. Local Competition Order, par. 1090 (emphasis added).

Despite this statement in the Local Competition Order, some controversy remained as to whether it was necessary to also examine the functionality of a CLEC switch as well as its geographic coverage when determining whether a CLEC was entitled to the

tandem rate. According to AT&T, the FCC has laid this controversy to rest in two recent pronouncements. The first is in its Intercarrier Compensation NPRM, where the FCC explained,

In addition, section 51.711(a)(3) of the Commission's rules requires only that the comparable geographic area test be met before carriers are entitled to the tandem interconnection rate for local call termination. Although there has been some confusion stemming from additional language in the text of the Local Competition Order regarding functional equivalency, section 51.711(a)(3) is clear in requiring only a geographic area test. Therefore, we confirm that a carrier demonstrating that its switch serves "a geographic area comparable to that served by the incumbent LEC's tandem switch" is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network. Id., par. 105. (emphasis added)

The FCC reiterated this clarification in a May 9, 2001 letter relating to a Sprint PCS request on this same issue. In that letter the FCC cited the above quoted statement in the Intercarrier Compensation NPRM and reiterated that the geographic comparability test is the only applicable rule.

AT&T pointed out that the FCC also recently interpreted its own rule in the Virginia Arbitration Decision. In that proceeding, Verizon argued that AT&T must demonstrate that its switches are actually serving comparable areas before AT&T may receive the tandem rate. AT&T contended that this is precisely the same argument SBC is making in this proceeding (although SBC goes even further and proposes the specific criteria that AT&T must meet to demonstrate that its switches are actually serving comparable areas.) In response to Verizon's arguments, the FCC ruled that "[w]e agree with AT&T and WorldCom, … that the requisite comparison under the tandem rate rule is whether the competitive LEC's switch is capable of serving a geographic area that is comparable to the architecture served by the incumbent LEC's tandem switch." (Virginia Arbitration Decision, par. 309 (emphasis supplied).) The FCC stated that Verizon "continues to assert that the competitive LEC switch must actually serve a geographically dispersed customer base in order to qualify for the tandem rate;" but concluded, "we agree, however, with AT&T and WorldCom that the determination whether competitive LEC's switch 'serves' a certain geographical area does not require an examination of the competitor's customer base." (Id.) Based on the evidence AT&T provided in that proceeding, which AT&T contends is the same evidence AT&T offers here, the FCC found that AT&T had met the test specified in 47 C.F.R. § 51.711(a)(3) in Virginia. (Id.) Thus, the FCC has interpreted its own rule and, AT&T argues, rejected exactly the same argument SBC is making here.

AT&T presented substantial unrebutted evidence showing that its switches in Illinois are capable of serving a geographic area comparable to SBC's tandem switches. Because AT&T's switches are capable of serving geographical areas comparable to SBC's tandem switches in Illinois, AT&T contends that the Commission should order SBC to pay the applicable tandem interconnection rate(s) for the termination of local traffic at each AT&T switch.

According to AT&T, it offers local exchange service in Illinois utilizing two separate networks. One network is operated on behalf of AT&T Communications of Illinois, Inc. The second network is operated on behalf of TCG Illinois and TCG Chicago ("TCG"). AT&T's and TCG's local service networks provide entirely distinct services and products to distinct classes of customers and are not integrated in any way. For this reason, AT&T proposes that each network may be judged independently for purposes of determining whether such network meets the standard in 47 C.F.R. § 51.711 (A)(3).

AT&T has deployed 4ESS switches, which function primarily as long distance switches, and 5ESS switches, which act as adjuncts to the 4ESS switches. AT&T has the ability to connect virtually any qualifying local exchange customer in Illinois to one of these switches through dedicated access services offered by AT&T or another access provider.

TCG provides local exchange services using Class 5 switches. TCG is able to connect virtually any customer in a LATA to the TCG switch serving that LATA either through (1) TCG's own facilities built to the customer's premises, (2) UNE loops provisioned through collocation in SBC end offices, or (3) dedicated high-capacity facilities (special access services or combinations of UNEs purchased from SBC).

AT&T offered unrebutted documentation demonstrating that its switches cover a geographic area comparable to the areas served by SBC's tandem switches. AT&T witnesses Finney-Schell-Talbot presented a series of maps that are identified as AT&T Exhibits 2.7 through 2.10. The first map, Exhibit 2.7, provides the number of tandem switches SBC currently operates and the areas these switches serve in Illinois on a LATA-by-LATA basis. The second map, Exhibit 2.8, shows the number of switches AT&T currently operates and the areas these switches serve in Illinois on a LATA-by-LATA basis. Currently, AT&T serves LATAs 358, 360, 368, 370, 374 and 520. While AT&T does not have a switch in LATAs 360 and 370, it is nevertheless serving LATA 360 through its CHCGILCLDS9 switch located in LATA 358 and LATA 370 through its SPFDILSDDS0 switch located in LATA 374. The third map, Exhibit 2.9, shows the number of switches TCG currently operates and the areas these switches serve in Illinois in LATAs 358, 368 and 634. While TCG does not have a switch in LATAs 368 and 634, it is nevertheless serving LATA 368 through its CHCGIL24DS0 switch located in LATA 358 and LATA 634 through its CHCGILCLDS7 switch located in LATA 358. Exhibit 2.10 shows the same three maps on a single page for easier comparison. When the three maps are viewed together, it becomes clear that AT&T and TCG switches cover a comparable or greater geographic area as that covered by the corresponding SBC tandem switches.

In addition to the maps, AT&T Exhibit 2.11 provides a detailed comparison of the number of Illinois rate centers that are served by the SBC tandem switches and the AT&T and TCG switches. Whether one compares the geographic rate center coverage on a LATA-by-LATA or a statewide basis, both the AT&T and TCG switches serve a

comparable and, in some cases, a greater number of rate centers than the SBC tandem switches. According to AT&T, this evidence demonstrates that the AT&T and TCG networks each meet the requirement of the FCC tandem rate rule, 47 C.F.R. § 51-711(a)(3). AT&T concluded that the Commission should affirm that AT&T and TCG are entitled to receive the tandem rate for terminating SBC's traffic.

SBC's Position

Under FCC Rule 711(a)(3), AT&T is entitled to charge the tandem reciprocal compensation rate if and only if AT&T proves that its switch "serves a geographic area comparable to the area served by the incumbent LEC's tandem switch." The issue centers on a legal question – the interpretation of that rule. AT&T and Staff contend that the rule requires AT&T to prove only that its switch is capable of serving a geographic area comparable to the area served by SBC's tandem switch. SBC, on the other hand, contends that AT&T must prove that its switch is actually, currently serving an area comparable to the area served by an SBC tandem. The weight of the case law supports SBC's position. That case law includes a decision by the United States District Court for the Northern District of Illinois, the court that will hear any appeal from the Commission's decision in this arbitration. AT&T's and Staff's position is supported by an arbitration decision issued by the Wireline Competition Bureau. AT&T tries to endow the WCB decision with special significance by characterizing it as an FCC decision, but it is not. As the WCB itself made clear, its decision was the mere equivalent of a Virginia Public Utility Commission arbitration decision. This Commission is bound to follow the Northern District of Illinois decision and hold that a requesting carrier does not satisfy Rule 711(a)(3) by showing only the area its switch is capable of serving; rather, it must prove that its switch is actually serving a geographic area comparable to the area served by the incumbent's tandem. AT&T has made no such showing, and therefore is not entitled to charge the tandem rate.

Staff's Position

AT&T is entitled to the tandem reciprocal compensation rates based on the geographic area served by AT&T's switches and AT&T need not use tandem switches to obtain the tandem reciprocal compensation rate. Staff recommends the Commission adopt AT&T's proposed language for Sections 21.4 and 21.4.5.

Commission Analysis and Conclusion

When SBC terminates, on its network, a telecommunication that originates on AT&T's network, AT&T is required to pay SBC reciprocal compensation to compensate SBC for the cost it incurs to terminate the call. If the hand-off is at the SBC end office switch that directly serves the SBC customer who is being called, then AT&T pays SBC the end office rate, which compensates SBC for the cost of end office switching alone. If the hand-off is at an SBC tandem switch (a hub that connects end office switches), then AT&T pays SBC the tandem rate, which compensates SBC for the tandem switching it performs to route the call to the end office switch that serves the called

party, plus transport between the tandem switch and the end office switch, plus end office switching.

The controversy arises when AT&T is terminating a call originated on SBC's network. The rate SBC pays AT&T for calls that originate on SBC's network and terminate on AT&T's network must be either SBC's end office rate or SBC's tandem rate. Currently, under their existing ICA, SBC pays the tandem rate. The FCC has a specific regulation addressing this issue, set forth in 47 CFR 51.711(a)(3), which states:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

This rule recognizes that while new entrants may adopt network architectures that differ from those of incumbents, the new entrants nonetheless are entitled to be compensated for their costs of terminating traffic. Local Competition Order, par. 1090. The FCC clarified this in a more recent order, stating:

> In addition, section 51.711(a)(3) of the Commission's rules requires only that the comparable geographic area test be met before carriers are entitled to the tandem interconnection rate for local call termination. Although there has been some confusion stemming from additional language in the text of the Local Competition Order regarding functional equivalency, section 51.711(a)(3) is clear in requiring only a geographic area test. Therefore, we confirm that a carrier demonstrating that its switch serves "a geographic area comparable to that served by the incumbent LEC's tandem switch" is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network. *Intercarrier Compensation NPRM*, par. 105.

SBC argues that this rules requires that a further showing must be made: that AT&T's switch is actually, currently serving an area comparable to the area served by an SBC tandem. SBC, in its Response to the Petition states that AT&T must specifically show, which SBC claims AT&T has not, that it (i) deploys a switch and (ii) deploys plant to at least 3 end user customers in at least 60% or more of the local calling areas that subtend an SBC tandem. SBC provided no testimony to support this position and no mention is made of this in its briefs. Further, SBC's proposed language does not reflect this proposal. Additionally, SBC's language renders the FCC's rule regarding geographic service areas irrelevant. SBC's language merely states "End Office or through a Tandem" with no mention of the FCC's geographic comparability test. AT&T, in contrast, proposes language that would permit AT&T to assess the tandem rate in all cases.

The parties and Staff agree that AT&T has shown that its switch is capable of serving a geographic area comparable to the area served by SBC's tandem switch.

AT&T offered unrebutted documentation demonstrating that its switches cover a geographic area comparable to the areas served by SBC's tandem switches. AT&T asserts that it is authorized to provide service in the geographic areas covered in exhibits 2.7-2.10. We do not believe that this rule requires an examination of AT&T's customer base. We agree with the FCC's Wireline Competition Bureau's interpretation in the Virginia Arbitration Decision that the correct question is whether AT&T's switches are capable of serving a geographical area that is comparable to the architecture served by the ILEC's tandem switch. Virginia Arbitration Decision at para. 309. Regardless of this legal interpretation, SBC's language does not incorporate the FCC's rule.

AT&T's unrebutted evidence, combined with SBC's inappropriate language and unsupported proposal for determining whether AT&T's switch actually serves a geographic area comparable to that of SBC's tandem, leads us to adopt AT&T's language for Sections 21.4 and 21.4.5 that would require SBC to compensate AT&T for local calls at SBC's tandem rate.

Intercarrier Compensation Issue 9

Shall SBC be required to make available to AT&T comparable compensation arrangements as those between SBC and other incumbent local exchange carriers and competitive local exchange carriers?

AT&T's Position

AT&T's proposed language in Section 21.3.7 provides that "SBC will make available to AT&T a compensation arrangement for serving customers in any optional or mandatory one-way or two-way EAS, including ELCS, area service by an ILEC or CLEC other than AT&T, that is similar to the corresponding arrangement that SBC-Illinois has with that other serving ILEC or CLEC for serving those customers when AT&T is similarly situated to the other ILEC or CLEC."

It is AT&T's position that CLECs are entitled under Section 252(i) of the Telecommunications Act of 1996 to adopt the reciprocal compensation arrangements used by SBC with other local exchange carriers, including those where the other carrier is an ILEC. Section 252(i) provides that local exchange carriers "shall make available any interconnection, service, or network element provided under an agreement". Notably, the law does not limit its terms to ILEC/CLEC interconnection agreements. Instead, the language carefully applies to all "local exchange carriers", and not to "incumbent local exchange carriers".

According to AT&T, its proposed language is necessary to prevent undue discrimination. Essentially, SBC seeks to perpetuate favorable traffic exchange agreements for EAS areas for one reason: to create a price squeeze. The following example reveals SBC's anti-competitive motivation and the fairness of AT&T's position. Assume that SBC has an EAS arrangement with Verizon North, Inc. between two adjacent exchanges. Typically, under such deals the carriers employ either "bill and keep" or a reduced reciprocal compensation rate for exchanging such calls. Thus, while

SBC customers are charged a lower rate to make these calls, they still are not carried at a loss, because switched access is not being paid. Further, assume that the Verizon North, Inc. consumer changes providers and now obtains service from AT&T. Under SBC's proposal, AT&T would not have the right to adopt the SBC /Verizon traffic exchange agreement. Thus, switched access charges would now be levied for exactly the same calls. This, in turn, would mean the termination cost of these calls would be substantially higher, for no proper reason. AT&T contends that this example shows SBC's proposal is patently unfair, and should not be adopted.

In support of its argument, SBC asserts that the ISP Remand Order prohibits CLECs from ever opting into an intercarrier compensation arrangement. AT&T contends that SBC misconstrues paragraph 82 of the ISP Remand Order as expansively applying to all interconnection agreements entered into in the past or in the future. In fact, the ISP Remand Order only prohibited carriers from opting into particular compensation arrangements - - existing agreements negotiated prior to the FCC's ISP Remand Order's intercarrier compensation mechanism. The intercarrier compensation regime established by the FCC in the ISP Remand Order applied as carriers re-negotiated expired or expiring interconnection agreements. It did not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of law provisions. Therefore, the FCC prohibited carriers from opting into these interconnection agreements to prevent carriers from taking advantage of more favorable pricing arrangements that were established prior to the ISP Remand Order's pricing mechanism. In other words, because the ISP Remand Order would not be effective until 30 days after it was published in the Federal Register, the FCC sought to prevent carriers from using that 30-day window to opt into more favorable interconnection agreements as a way to postpone implementation of the ISP Remand Order's pricing mechanism. Footnote 154 of the ISP Remand Order shows that the opt-in prohibition is indeed very narrow in its scope and does not support SBC's position:

> This Order will become effective 30 days after publication in the Federal Register. We find there is good cause under 5 U.S.C. § 552(d)(3), however, to prohibit carriers from invoking section 252(i) with respect to rates paid for the exchange of ISP-bound traffic upon publication of this Order in the Federal Register, in order to prevent carriers from exercising opt in rights during the thirty days after Federal Register publication. To permit a carrier to opt into a reciprocal compensation rate higher than the caps we impose here during that window would seriously undermine our effort to curtail regulatory arbitrage and to begin a transition from dependence on intercarrier compensation and toward greater reliance on end-user recovery.

In their reply testimony, AT&T witnesses Finney-Schell-Talbott responded to Staff witness Dr. Zolnierek, who opposed AT&T's initial proposed language, contending that (1) AT&T's proposed Article 21, Section 21.3.7 is overly broad and would allow AT&T to obtain intercarrier compensation rates that are above the FCC's prescribed

rate caps for ISP-bound traffic, and (2) this type of opt-in arrangement is prohibited by the FCC's ISP Remand Order.

AT&T, however, proposed its contract language in Article 21, Section 21.3.7 to SBC in the expectation that AT&T would have lower intercarrier compensation rates in optional and mandatory EAS areas. In order to accommodate Staff's concerns, AT&T offered in its reply testimony that it would accept a revision to its proposed Section 21.3.7 so that the opt-in provision would be available only if it results in lower intercarrier compensation rates. The proposed revised section below contains this revision in caps:

> 21.3.7 SBC will make available to AT&T a compensation arrangement THAT PROVIDES LOWER COMPENSATION RATES, INCLUDING BILL AND KEEP, for serving customers in any optional or mandatory, one way or two way EAS, including ELCS, area serviced by an ILEC or CLEC other than AT&T, that is similar to the corresponding arrangement that SBC-Illinois has with that other ILEC or CLEC for serving those customers when AT&T is similarly situated to the other ILEC or CLEC.

The Commission should therefore adopt AT&T's proposed revised language for Section 21.3.7.

SBC's Position

AT&T should not be permitted to opt into another carrier's intercarrier compensation arrangements – particularly on an end-user specific basis, which is what AT&T is seeking – after this Agreement is executed. The Commission should accept Staff's recommendation and reject AT&T's proposal, not only because it is substantively flawed (there is no legal support whatsoever for the AT&T's proposal), but also because AT&T's proposed language is unworkable in any event.

Staff's Position

AT&T proposes opt-in language for intercarrier compensation rates, terms, and conditions that is overly broad, raises feasibility questions, and allots too much discretion to AT&T to pick and choose reciprocal compensation rates. Staff recommends the Commission reject AT&T's proposed language for Article 21, Section 21.3.7 language.

Commission Analysis and Conclusion

AT&T relies on Section 252(i) of TA96 for its position. That section states:

> Availability to Other Telecommunications Carriers. -- A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier

> upon the same terms and conditions as those provided in the agreement. 47 USC § 252(i).

AT&T also explains the intended use of its proposed opt-in language:

> "It is intended only to be used where AT&T obtains customers from SBC who are located in exchanges with extended area service ("EAS") or extended local calling service (ELCS") arrangements." AT&T Reply Brief at 102.

We agree with Staff that AT&T's proposal raises the potential for countless sets of different reciprocal compensation rates between AT&T and SBC. We are also troubled by the possibility of AT&T selecting reciprocal compensation rates on the basis of area by area traffic imbalances. This decision is also consistent with the general trend in reducing reciprocal compensation payments.

Moreover, AT&T's language fails to limit itself to agreements approved pursuant to Section 252 or to require AT&T to adopt all legitimately related terms in the underlying agreement. Accordingly, we reject AT&T's proposed language for Section 21.3.7.

Intercarrier Compensation Issue 10(a)

Should 8YY traffic compensation be determined by the jurisdiction of the traffic?

Intercarrier Compensation Issue 10(b)

Should the 8YY service provider be required to suppress billing of terminating charges to the originating carrier, and provide a report of the traffic suppressed?

AT&T's Position

AT&T witness Rhinehart testified that toll free calling is now offered using a number of area codes including 800, 888, 877. This calling is collectively referred to as "8YY" services. Residential and business subscribers purchase 8YY service from a provider so that distant family members or business clients may call the purchaser on a toll free basis. In most instances, 8YY calling is interexchange, originating in one calling area and terminating in another calling area, and is thus often subject to assessment of exchange access charges. Some 8YY calling is intraexchange, but is presently assessed exchange access charges by SBC.

The issue presented is whether it is appropriate to assess exchange access charges on calls that are local in nature. AT&T's position is that when an 8YY call originates and terminates within local calling areas, it is inappropriate to assess exchange access charges for what is clearly local traffic. The correct intercarrier charges for such calls should be reciprocal compensation rates. SBC proposes to treat

all intraLATA 8YY traffic, both local and intraLATA interexchange, as intraLATA toll traffic and to assess exchange access charges on all such traffic.

It is technically possible to differentiate 8YY calls that originate and terminate within local calling areas from those that do not. 8YY call records identify both the originating telephone number and the terminating POTS (plain old telephone service) telephone number. The pairing of originating and terminating telephone numbers determines the jurisdictional classification of a call. Thus, for all 8YY calls, the correct jurisdiction – whether local or intraLATA toll – is readily identifiable.

AT&T therefore proposes that the Commission adopt its proposed language for Sections 21.9.1, 21.9.3 and 21.9.4.

AT&T witness Karen Moore testified that AT&T's position is that Article 21, Section 21.9.3 of the ICA should expressly provide that the 8YY terminating service provider (i.e., the terminating carrier) will suppress the terminating compensation mechanism and related local or access billings for 8YY calls based on the Exchange Message Interface ("EMI") indicator of such calls, and will provide a monthly report to the originating provider of the suppressed calls for that month. SBC proposes that the ICA be silent on this topic. As a result, SBC would not be required by the ICA to suppress billing of terminating access charges for 8YY calls originating from an AT&T end user.

AT&T stated that if SBC does not suppress billing of terminating access charges for 8YY calls, AT&T will be financially harmed. This is because AT&T would be billed for terminating reciprocal compensation and/or access billing which would negate the originating access payment that SBC pays AT&T for transporting the 8YY call. Indeed, SBC's proposal would allow it to be double-compensated. This is because 8YY calling providers are compensated by the party receiving (i.e., terminating) the call.

AT&T stated that the suppression of terminating local and/or access billing charges is easy for SBC to implement. SBC can simply suppress the billing by identifying the 8YY calls through the EMI Indicator on the call records and provide a monthly report with the details of the suppressed calls.

AT&T urged the Commission to adopt its position that SBC should suppress terminating local and/or access billing charges. In the alternative, AT&T stated that if the Commission determines that the ICA should not require SBC to suppress the terminating billing for 8YY calls, SBC should be required to provide a credit for the amount charged for reciprocal compensation or access billing in relation to the 8YY calls.

SBC's Position

8YY traffic is an optional Feature Group D service available to carriers from SBC's access tariffs. SBC modifies existing network architecture in order to support this

service; in turn, carriers recover charges associated with 8YY service by billing the terminating end users whom have purchased the 800 retail service.

Current switching protocol does not allow SBC to identify terminating jurisdiction for an 800 call; it is not currently industry standard to separate jurisdiction on 800 traffic. The overwhelming majority of this traffic is indeed intraLATA or interLATA toll with a de minimis amount terminating locally. 800 service is not used to stimulate - or even attract - local telephone traffic. The intent of 800 service is to stimulate traffic to a distant end user by eliminating the originating end users' toll charges.

Commission Analysis and Conclusion

Intercarrier Compensation Issue 10a concerns the appropriate intercarrier compensation method for 8YY traffic. According to AT&T witness Rhinehart, toll free calling is now offered using a number of area codes including 800, 888, 877, etc., collectively referred to as 8YY services. Mr. Rhinehart states that residential and business subscribers purchase 8YY service from a provider so that distant family members or business clients may call the purchaser on a toll free basis. In most instances, he testifies, 8YY calling is interexchange, originating in one calling area and terminating in another calling area, and is thus often subject to assessment of exchange access charges. Some 8YY calling is intraexchange, but is presently assessed exchange access charges by SBC. The issue presented is whether it is appropriate to assess exchange access charges on all 8YY calls, even those that are local in nature.

According to AT&T, it is technically possible, and easy to implement, a system to differentiate 8YY calls that originate and terminate within local calling areas from those that do not. SBC does not dispute this, but rather argues that since terminating carriers bill their 800 customers' terminating usage based on volume rather than varying the rate by end user location, revenue should be shared between carriers on that basis. Further, SBC maintains that its position reflects the industry standard.

We do not find SBC's arguments to be convincing. If it is possible to track the different calls or in some to way to reach a reasonable approximation, it is appropriate to do so. Intercarrier compensation rates should not be based on "industry standards" that do not reflect the type of call or the general trend of reducing intercarrier payments. Contrary to SBC's argument, the rates carriers charge end users for 8YY service has no bearing on the appropriate intercarrier compensation rates. Additionally, if either carrier believes the other is gaming the system by strategically assigning POTS numbers, that can be addressed through the Commission's complaint processes. Accordingly, we adopt AT&T's language for Sections 21.9.1 and 21.9.4.

AT&T proposes that Article 21, Section 21.9.3 of the ICA should expressly provide that the 8YY terminating service provider (i.e., the terminating carrier) will suppress the terminating compensation mechanism and related local or access billings for 8YY calls based on the Exchange Message Interface ("EMI") indicator of such calls, and will provide a monthly report to the originating provider of the suppressed calls for that month. SBC proposes that the ICA be silent on this topic. As a result, AT&T

contends that SBC would not be required by the ICA to suppress billing of terminating access charges for 8YY calls originating from an AT&T end user.

Based on our reading of agreed to section 21.9.2, it appears that the originating carriers sends the billable records to the terminating party. We agree with SBC that AT&T's language does not address the situation where this reporting is incomplete. Furthermore, when Section 21.9.3 is read in conjunction with 21.9.4, they do appear to be redundant. Section 21.9.4 clarifies which party pays for these calls. For these reasons, we decline to adopt AT&T's language for Section 21.9.3.

Intercarrier Compensation Issue 11

AT&T Issue: Should SBC be permitted to impose a limit on AT&T tariffed exchange access rates in the local Agreement?

SBC Issue: Should AT&T be able to charge an Access rate higher than the incumbent without a cost study?

AT&T's Position

According to AT&T, SBC seeks Commission authorization here to impose a limit on AT&T's tariffed exchange access rates. AT&T opposes SBC's proposal. AT&T contends that exchange access rates are simply beyond the scope of the interconnection agreement negotiation encompassed by Section 251 of the Telecommunications Act. Indeed, under the terms of Section 251, nothing relating to exchange access is a mandatory part of interconnection agreements. AT&T explained that carrier access rates predate and are entirely separate and distinct from the Telecommunications Act's interconnection obligations. That is why the Telecommunications Act's detailed interconnection obligations set forth in Section 251 and the interconnection arbitration rules in Section 252 do not include any discussion of setting carrier access rates. Carrier access rates are derived from the relationship of the ILECs to the IXCs as local and interexchange carriers, not as a result of local exchange competition. As a matter of law, then, AT&T requests that the Commission should reject SBC's attempt to insert the carrier access charge issue into this arbitration.

AT&T stated that if SBC has a problem with AT&T's carrier access rates, then SBC should raise the issue in a complaint proceeding, not in a Section 252 arbitration. AT&T's exchange access rates are tariffed in both the state and interstate jurisdictions and SBC has the right to protest AT&T's access rates at this Commission for state access rates and at the FCC for interstate access rates. Notably, SBC has not done so.

In considering AT&T's position, the Commission should keep in mind that AT&T's and SBC's access tariffs are quite different. As suggested under FCC rules for CLEC pricing of switched exchange access services offered by CLECs, AT&T's intrastate and interstate tariffs reflect composite rates of a number of incumbent local exchange carrier switched access rate elements. A table presented by AT&T Witness Rhinehart captures a few of the structural differences between SBC's Illinois and FCC tariffs

compared to AT&T's comparable tariffs. Moreover, SBC's state and FCC tariffs have a number of additional recurring rates and nonrecurring charges that can be imposed on CLECs and interexchange carriers that could have an effect on any blended rate. Some recurring rates include entrance facilities, common trunk ports, end office and tandem office dedicated trunk ports, channel mileage (terminations and per mile), multiplexing, and more. In addition, some of the recurring elements are imposed on a per-minute-per-mile basis that will vary from carrier to carrier.

Accordingly, AT&T requests that the Commission adopt AT&T's proposed Section 21.12.1.

SBC's Position

AT&T should not be permitted to charge terminating access rates that exceed SBC's tariffed terminating access rates. SBC's position is in accord both with this Commission's recent precedent and with FCC precepts set forth in the Access Reform Order (CC Docket No. 96-262). AT&T's contract language should be rejected because AT&T's access rates are not supported by any evidence, have never been approved by this Commission, and are changeable-at-will rates.

Staff's Position

Staff takes no position on this issue.

Commission Analysis and Conclusion

In the TDS Arbitration we ruled on substantially the same issue in favor of SBC. We stated:

> The Commission's decision is that TDS should charge Ameritech's tariffed rates for terminating access when Ameritech is the primary toll carrier until TDS is able to document its actual costs for terminating that toll traffic. TDS would be required to provide Ameritech with 30 days notice of a proposed change in its access tariffs and to provide Ameritech with the opportunity to have its cost experts to inspect the documentation used to justify its rates. If no record inspection is requested and performed, the rates go into effect. If Ameritech protests the rates after inspecting TDS' records, then the issue should be resolved through the dispute resolution process. Arbitration Decision, Docket 01-0338 at 50.

AT&T has given us no reason to change our decision. We agree with and adopt our decision in Docket 01-0338. Section 21.12.1 shall include the following language:

> For intrastate intraLATA toll service traffic, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service,

including the Carrier Common Line (CCL) charge where applicable, as set forth in each Party's Intrastate Access Service Tariff, but not to exceed the compensation contained in an ILEC's tariff in whose exchange area the End User is located, unless CLEC's Intrastate Access Service Tariff are based on its documented actual costs for terminating toll traffic. AT&T is required to provide SBC with 30 days notice of a proposed change in its access tariffs and to provide SBC with the opportunity to have its cost experts inspect the documentation used to justify its rates. If SBC does not request and perform a record inspection, the rates go into effect. If SBC protests rates after inspecting AT&T's documentation, the issue will be resolved pursuant the dispute resolution provisions. For interstate intraLATA intercompany service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 Service, including the CCL charge, as set forth in each Party's interstate Access Service Tariff, but not to exceed the compensation contained in an ILEC's tariff in whose exchange area the End User is located, unless CLEC's Intrastate Access Service Tariff are based on its documented actual costs for terminating toll traffic. AT&T is required to provide SBC with 30 days notice of a proposed change in its access tariffs and to provide SBC with the opportunity to have its cost experts inspect the documentation used to justify its rates. If SBC does not request and perform a record inspection, the rates go into effect. If SBC protests rates after inspecting AT&T's documentation, the issue will be resolved pursuant the dispute resolution provisions.

Intercarrier Compensation Issue 12

Should combined traffic on the Feature Group D trunks be jurisdictionally allocated for compensation purposes?

AT&T's Position

AT&T proposes that the ICA include a methodology for jurisdictionalizing traffic on AT&T's Feature Group D ("FG-D") trunks. Without this methodology, AT&T is required to have separate trunk groups for interLATA and intraLATA traffic, which is not an efficient or cost-effective arrangement.

AT&T contends that its proposal to use a factor methodology is easy to implement. Factors, based on statistically valid samples, are routinely used within the telecommunications industry to jurisdictionalize traffic for rate application purposes. In fact, since 1984, the parties have used a PIU Factor on FG-D trunks to identify interstate and intrastate minutes of use for application of interstate and intrastate access charges. AT&T proposes to add one more step to that process — the use of a percent local usage ("PLU") Factor to identify local and intraLATA toll minutes of use for application of reciprocal compensation and intrastate access charges.

AT&T proposes language that would allow the parties to combine intraLATA and InterLATA traffic over IXC FG-D trunks, which is more efficient and cost effective than requiring the two separate trunk groups. The originating party will provide two factors, a PIU and a PLU. The PIU will be calculated by the originating party by dividing identifiable Interstate minutes of use ("MOU") by the total identifiable MOU delivered to the other party for termination on the IXC FG-D trunks. The PLU will be calculated by the originating party by dividing identifiable local MOU by identifiable Intrastate MOU delivered to the other party on the IXC FG-D trunks. Identifiable MOU will be determined based on the originating party's network AMA recordings for the preceding three-month period. The factor calculation will be subject to the audit provisions contained in Article 1, Section 32.8 of the ICA. The terminating party will (1) apply the PIU to all MOU carried over the IXC FG-D trunks to separate the traffic between interstate and intrastate minutes of use, and (2) apply the PLU to the terminating Intrastate minutes of use carried over the IXC FG-D trunks to separate such traffic between local and intrastate toll MOU.

AT&T asserts that the factor process it proposes is fair, logical and understandable. It is simply an extension of the PLU factor process in Section 21.15.1 of the ICA, which is not in dispute, to include a jurisdictional separation of Interstate and intrastate traffic before further separating the intrastate traffic between local usage and intrastate toll.

SBC objects to AT&T's proposal. SBC requires CLECs to use separate trunks for interLATA toll-switched traffic and for intraLATA toll/local traffic and does not allow carriers to combine both types of traffic on a single trunk group, because, according to SBC, such billing arrangements are not commercially reasonable or cost effective and would require extensive modifications to SBC's billing systems.

AT&T contends that SBC is wrong for four reasons. First, combining interLATA toll traffic and intraLATA local and toll traffic on the same trunks is commercially reasonable and is more efficient than having separate trunks. SBC has agreed to this arrangement in other states and Verizon has agreed to it in New York and Virginia, which are the last two interconnection agreements AT&T has entered into with Verizon. The same arrangement is also used throughout BellSouth and in Arizona, Idaho, Montana, New Mexico and Utah in Qwest territory. Therefore, the arrangement is clearly commercially reasonable and entirely feasible. Further, combining both types of traffic on the same trunks requires fewer trunks for the same grade of service than if the traffic were handled on separate trunks, so it is more efficient and therefore is more cost effective.

Second, a CLEC such as AT&T may interconnect at any technically feasible point within the incumbent's network and is permitted to choose the most efficient interconnection arrangement. Section 251(c)(2) of the Act and FCC orders and rules provide that new entrants may interconnect at any technically feasible point using any technically feasible method. Specifically, CFR 51.305(a)(2) obligates SBC to allow interconnection by a CLEC at any technically feasible point. In its Local Competition Order, the FCC stated:

> The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic. (Local Competition Order, par. 172 (emphasis added).)

Third, CLECs may interconnect using any technically feasible method. In the Local Competition Order, the FCC stated:

> We conclude that, under sections 251(c)(2) and 251(c)(3), any requesting carrier may choose any method of technically feasible interconnection or access to unbundled elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection or access to unbundled elements. (Id., par. 549 (emphasis added)

Fourth, a CLEC such as AT&T may require an ILEC, such as SBC, to modify its network to accomplish interconnection. Again, in the Local Competition Order, the FCC stated:

> If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated. (Id., par. 202)

In summary, under the Act and the FCC's interconnection rules, AT&T may interconnect at any technically feasible point using any technically feasible method, and SBC is required to accommodate such interconnection. AT&T believes that its request to combine interLATA and intraLATA traffic on its IXC FG-D trunks is technically feasible and commercially reasonable as evidenced by the fact that this same arrangement is being used by AT&T elsewhere in SBC states and in Verizon, BellSouth and Qwest territories, and in those situations, the parties are using the factor methodology described in this testimony and proposed by AT&T for Article 21, Section 21.15.2. The use of the same methodology here in Illinois will not impose an undue burden on SBC. AT&T therefore recommends that the Commission adopt AT&T's proposed language in Section 21.15.2.

SBC's Position

AT&T's proposal to combine originating local and intraLATA toll traffic with interexchange access traffic on an IXC's Feature Group D exchange access trunks should be rejected, because, among other reasons, (1) the Commission has previously rejected it, in two arbitrations and in a generic proceeding in which AT&T participated; (2) it is in conflict with methods for exchanging local and intraLATA toll traffic to which AT&T and SBC have agreed in this Agreement; (3) it would improperly affect SBC's compensation arrangements with third party carriers – IXCs – that are not parties to this

proceeding; (4) it would cause unnecessary billing disputes; and (5) it is unacceptably imprecise.

Commission Analysis and Conclusion

Although the Commission may agree with AT&T in principle that combining traffic on Feature Group D trunks is more efficient, AT&T's proposal is incomplete. We are reluctant to institute AT&T's proposal when so many questions remain unanswered.

AT&T makes four arguments in support of its proposal: 1) it is done in other states by SBC and other ILECs and, therefore, is commercially reasonable as well as feasible; 2) Section 251(c)(2) and FCC regulations allow AT&T to interconnect at any technically feasible point within SBC's network; 3) Sections 251(c)(2) and 251(c)(3) and FCC regulations allow AT&T to interconnect using any technically feasible method; and 4) AT&T may require SBC to modify its network to accomplish interconnection.

AT&T argues that SBC is required to modify its systems to allow AT&T to interconnect at any place and in any manner. The FCC language quoted by AT&T recognizes that ILECs may be required to modify their systems "at least to some extent." This does not give CLECs the right to demand any modification to an ILEC's systems at no cost to the CLEC. AT&T does not dispute that CABS, as it currently exists, cannot accommodate AT&T's proposed application of PIU and PLU to access minutes. SBC asserts that extensive changes would be required to CABS system to implement this proposal. AT&T does not address, let alone volunteer, to pay for these modifications.

AT&T argues that SBC's distinction between AT&T local and AT&T long distance is "mere sophistry." Regardless of the structure of AT&T's business, there remains the many issues identified in SBC's Initial Brief regarding the interplay of AT&T's proposal with SBC's access tariff provisions. We are troubled by SBC's unanswered statement that AT&T would be providing SBC with the interstate usage factor to be applied in calculating a bill to be rendered to an interstate carrier.

Similarly, AT&T does not answer SBC's allegation that its proposal conflicts with other sections of the ICA.

Neither party offered rebuttal testimony on this issue or cross-examined the witnesses. AT&T requests that we order SBC to modify its systems, yet does not answer the many valid concerns that SBC raises. In its Reply Brief, the only answer AT&T gives for these concerns is that they are disingenuous because SBC and other ILECs do similar things in other states. That response, while it may be true, does not provide the information required by the Commission to implement the proposal in Illinois, let alone to adopt specific contract language dealing with all the nuances of AT&T's proposal.

H. Comprehensive Billing Issues

Comprehensive Billing Issue 1

Should CABS billing be used when the OBF has established guidelines for its use?

AT&T's Position

AT&T has proposed contract language that would require SBC to use the industry standard CABS billing system for all charges and services for which the OBF has developed guidelines. This would include using CABS for the billing of OS/DA services, since the OBF has developed guidelines for the use of CABS to bill for OS/DA services. SBC currently uses its Resale Billing System for OS/DA, which AT&T stated requires it to incur unnecessary expenses that include set up and maintenance processes to validate the charges billed under this non-CABS billing system. These extra expenses are incurred because the use of multiple billing systems increases the difficulty of the bill validation processes for AT&T and increases the resources and time that AT&T must expend to validate a bill. AT&T stated that receipt of a CABS-formatted bill for as many services as possible, as opposed to receipt of bills generated by multiple billing systems and formats, reduces the drain on AT&T's resources to verify and process bills received from SBC. AT&T also stated that the use of CABS billing is common throughout the industry nationwide, has been adopted by the OBF, and is also used extensively within SBC's family of companies. Finally, AT&T disagreed with Staff witness Weber's recommendation, and stated that her reasoning did not support not requiring SBC to move OS/DA billing to CABS format consistent with OBF guidelines.

SBC's Position

There is no legal basis for requiring SBC to use CABS billing merely because the Ordering and Billing Forum has established guidelines for its use. As Staff notes, OBF guidelines are non-binding, and it is within SBC's discretion whether or not to implement them. Aside from having no legal basis, AT&T's proposal is unreasonable because it is made without consideration of such pertinent factors as: (1) the cost of implementation; (2) whether the current billing system needs to be replaced; (3) the disruption that would be caused by the change; and (4) whether other CLECs, all of which would be affected, want SBC to make the switch that AT&T proposes.

Staff's Position

Staff recommends the following language for Section 27.1.3:

> SBC Illinois will bill in accordance with this Article those charges AT&T incurs under this Agreement; including charges for Resale services, Network Elements, Interconnection and other services. Any new elements billed in CABS will be in accordance to OBF guidelines where they have been developed.

Staff believes that language proposed by AT&T should be rejected and only the last sentence of the language proposed by SBC should be accepted for Section 27.1.3. Since neither the Commission nor the FCC have stated that all UNEs must be billed out of CABS, and since changes to the specific elements billed by a given billing system are potentially cost prohibitive (as SBC has explained) and time consuming (at least in the near future) for all parties involved, neither AT&T's language nor the first two sentence of SBC's language should be adopted absent specific language addressing the billing elements in question or the explicit agreement of all parties affected. If SBC were to move its OS and DA charges to CABS, Staff further recommends that SBC should conduct an analysis of the cost and processes involved since national guidelines for CABS billing have been in place for some time for OS and DA charges. Likewise, AT&T should raise this issue in the forum for which these changes are usually requested and discussed and bring other CLECs into the dialogue. Staff Ex. 4.0 (Weber) at 10-11.

Commission Analysis and Conclusion

This issue deals with whether or not SBC should be required to use Carrier Access Billing System ("CABS") billing where it has been established by the Ordering and Billing Forum ("OBF"). AT&T proposes that SBC should convert their system over to CABs billing for the operator-services/directory-assistance ("OS/DA") pursuant to the OBF guidelines.

AT&T argues that by SBC billing in the present resale billing system ("RBS") that AT&T incurs greater costs for processing the bills. AT&T maintains that they incur substantial unnecessary expenses for setting up and maintaining billing process under non-CABs billing. AT&T argues that the only way that they can process the bills is under a manual basis when the billing in is non-CABs form. According to AT&T, CABs is the industry standard under OBF. AT&T also states that all other UNEs are billed under the CABs system. AT&T acknowledges that this may not be a simple process for SBC, but that SBC should have learned from prior conversions and should not make the same mistakes again in their conversion.

SBC first and foremost argues that transferring from the RBS system to CABs billing would be a costly venture. They have not yet undertaken any type of studies to indicate what the potential costs would be for the conversion to CABs billing. They also contend that AT&T has failed to show how much money they would possibly save by converting OS/DA to CABs billing as opposed to the cost of SBC transforming their present billing into CABs billing. SBC goes on to say that there is no evidence that other CLECs wants the conversion of the OS/DA into CABs billing. Finally, AT&T has failed to show why the current billing system is inadequate and to state why legally under State and Federal law this Commission should intervene in a billing issue.

Staff points out that AT&T's proposal is potentially cost-prohibitive. There are no considerations for cost and development for the conversion to CABs billing by SBC. There also is no indication of the savings that AT&T would experience if the billing was

converted to CABs billing. Staff recommends that SBC should conduct an analysis of the costs and processes involved if it were to move its OS/DA to CABs billing.

We fail to find that AT&T's proposal is acceptable to require SBC to convert to CABs billing. There has been no indication as to the savings to AT&T or what expense SBC would incur to transfer the current billing system to CABs billing. We agree with Staff's proposal to add a line indicating that SBC should conduct an analysis of the cost and processes involved if they were to move its OS/DA to CABs.

Therefore the new language should read as follows.

> 27.1.3 SBC will bill in accordance with this article those charges AT&T would incur under this agreement including charges for retail service, network element and interconnection and other services. Any new elements billed in CABs will be in accordance with OBF guidelines where they have been developed. SBC will also implement an analysis of the cost and processes involved if it were to move its OS/DA to CABs billing.

Comprehensive Billing Issue 2

Should the Billed Party have the discretion to designate a changed billing address for different categories of bills upon 30 days written notice to the Billing Party?

AT&T's Position

AT&T proposed straightforward language that will allow for billing address changes in the case of reorganization or shifting of functions within the AT&T organization during the term of the ICA. Such transitions and reorganizations are common in this industry. AT&T proposed, simply, that either billed party may designate a changed billing address for different categories of bills by providing 30 days written notice to the billing party. AT&T asserted that a billing party should expect that a specific category of a bill may be required to be sent to a different address as a result, for example, of a reorganization of functions at the billed party. AT&T stated that SBC's response, that its billing systems are incapable of sending bills for different services to different addresses, was not credible or reasonable. AT&T noted that SBC currently sends bills for collocation to AT&T at a different address from other bills. Moreover, because SBC bills AT&T for OS/DA using the RBS and for UNE-P using CABS, it makes sense that SBC would be able to send these different bills to different addresses because they are generated by different SBC billing systems. AT&T concluded that SBC's position, and Staff witness Weber's acceptance of that position, are not reasonable; thus, AT&T's language should be adopted.

SBC's Position

SBC's systems cannot send electronic bills to separate addresses for different categories of products. Nor is there any legitimate reason for requiring SBC to develop an entirely new billing system with this capability just to satisfy AT&T's request. The Commission should adopt Staff's recommendation and resolve this issue in favor of SBC.

Staff's Position

AT&T's proposed language for Section 27.2.1.3 should be rejected. AT&T does not provide specifics for its proposal nor does it sufficiently quantify the impact to AT&T of SBC not complying with its request. If, in fact, AT&T is impeded from paying its bills on time due to receipt of all electronic bills to a single address then perhaps AT&T should negotiate a timeframe greater than the current 30 days from Bill Date to submit payment to SBC (as detailed in article 27.3 of the proposed interconnection agreement).

Commission Analysis and Conclusion

AT&T is proposing that it be allowed to designate a change of billing address for different categories of billing by providing SBC with 30 days written notice. SBC asserts that this would create difficulties as it may have to re-establish its billing system and it would be too costly to implement such changes. Staff agrees with SBC, that if SBC is required to bill to different addresses, this could be a difficult and costly provision.

We agree with SBC on this issue. AT&T has failed to show why it is necessary for it to be allowed to send billing to a different address. Since most of the billing is done in CABs, the ACNA identifier has an associated billing account number that correlates to the class of service. AT&T has failed to show how much cost would be involved in allowing separate billing to be allowed. It also has failed to indicate what would be the potential costs and expenses incurred by SBC to send different billing to different addresses. Therefore the language proposed by AT&T should not be included in Section 27.2.1.3.

Comprehensive Billing Issue 3

Must SBC provide the OCN of an originating carrier to AT&T operating as a facilities based carrier, when the originating carrier is utilizing SBC's switch on an unbundled basis?

AT&T's Position

AT&T's proposal requires that when AT&T is acting as a facilities-based provider (i.e., using its own switching) and is terminating traffic that was originated by another carrier using unbundled switching purchased from SBC, SBC provide AT&T with a report showing the Operating Company Number ("OCN") of the carrier originating the call. Without such information, AT&T will have no way to identify the true originating

carrier for billing purposes. The originating OCN of the third party carrier is a unique identifier which distinguishes carrier ownership, and is the only way that AT&T can correctly bill the true originating carrier.

AT&T stated that SBC has this information but has refused to share it with AT&T; rather, SBC has asserted that AT&T could obtain the same information by accessing SBC's LIDB. AT&T stated that this solution is unreasonable. First, SBC would charge AT&T for each query, but SBC's witness was unable to state exactly how much this charge would be. Next, AT&T does not have the systems and processes necessary to enable it to use the LIDB to look up the originating carrier OCNs for the calls it terminates. Moreover, the OBF has not approved the use of the LIDB as a source for this information. AT&T should not have to expend resources to develop systems to access the LIDB when the OBF may not adopt the LIDB as the industry standard source for this information.

SBC proposed that it could offer to AT&T a report that identifies the originating carrier for all CLEC UNE-P traffic by ACNA, not by OCN. AT&T stated that this is unacceptable because the report only provides total terminating minutes per billing period for each originating carrier and does not provide individual call detail. AT&T stated that SBC's proposed report is insufficient to support AT&T's billings to the originating carriers. AT&T stated that because SBC has refused to provide the OCN to AT&T and has proposed an unacceptable alternative, if AT&T's proposed language is not adopted, AT&T should be entitled to treat unidentified calls as though originated by SBC for purposes of billing for termination.

SBC's Position

SBC has agreed to give AT&T a report that will identify for AT&T the originating carrier for each call that originates on the network of a third party carrier, transits SBC's network and is then terminated by AT&T's switch. The report will accomplish this by stating each originating carrier's unique Access Customer Name Abbreviation ("ACNA"). AT&T, however, requests that the Commission require SBC to modify the report so that it will instead (or also) identify each originating carrier by its Operating Company Number ("OCN"). The Commission should deny AT&T's request. AT&T has offered no explanation why the ACNAs that SBC has agreed to provide are not adequate for AT&T's purpose, and AT&T also has not offered to compensate SBC for the costs it would incur to modify the report to meet AT&T's demand. The Commission should not require SBC to incur costs to provide OCNs to AT&T when SBC has already agreed to provide AT&T with information – ACNAs – that will accomplish exactly the same purpose.

Commission Analysis and Conclusion

This issue deals with whether or not SBC needs to provide the operating company number to AT&T for carriers that originate traffic that AT&T terminates on its network.

AT&T argues that providing the OCN number is necessary in order for them to properly bill the originating carrier for terminating a call on its network. This billing situation would only arise when traffic is originated and transmitted through SBC's network then handed off to AT&T for termination by an AT&T switch. AT&T feels that the information provided on the ACNA is not sufficient for them to be able to properly bill the originating carrier. The ACNA identifier only shows the total terminating minutes of use for each originating call and will not provide individual call detail. In the alternative, if SBC is not required to provide the OCN, then AT&T feels they should be able to bill SBC as the originating carrier and let SBC follow through and bill the correct originating carrier.

SBC agrees that they need to provide information to AT&T so the originating carrier can be properly billed for termination at AT&T switches. SBC claims that the ACNA number is sufficient in providing the information necessary for AT&T to accomplish their goal. As an alternative, SBC states that AT&T can go to their LIDB system and obtain any additional information that may be necessary in order to bill the originating carrier. SBC argues that they are not required under the law to provide the OCN and that it would be a costly venture for them to provide this additional information to AT&T concerning all of these call. SBC claims that AT&T will receive no additional information by obtaining the OCN than they would have if SBC provided the ACNA identifier.

In AT&T's response they argue that the LIDB service provided by SBC is not approved by the OBF.

We agree with SBC that it should not be required to provide the OCN of the originating third party carrier to AT&T on all calls that are terminated on the AT&T network. There has been no competent evidence provided to show that the OCN will provide the additional information necessary for AT&T to properly bill the originating carrier whose call is terminated on the AT&T switches. However, AT&T should not be required to spend additional funds in order to obtain the necessary information through the LIDB process or any other manner where the originating call is provided through an SBC network and terminated on the AT&T switches. As an alternative, we propose that in situations where AT&T has a dispute with a third party carrier (other than SBC) concerning billing for termination on the AT&T network that upon written request SBC will provide the OCN or whatever additional information is necessary for AT&T to properly bill the originating carrier. We also do not find it is reasonable for AT&T to be able to bill SBC as the originating carrier when AT&T has insufficient information to bill the proper originating carrier.

The language for § 27.10.3 should read as follows:

> Where AT&T, as a facility-based provider, is using terminating recordings produced within its network to bill reciprocal compensation, SBC Illinois will provide a report to identify the UNE originating traffic and AT&T will

bill the originating UNE carrier for the MOUs terminated on the AT&T network. SBC Illinois agrees the report will be replaced by identifying data transmission once an industry billing/recording forum determined a technically feasible method to do so.

When AT&T has a billing dispute with a third party originating carrier who accessed through the SBC network, SBC will provide AT&T the OCN or other additional information. This will allow for AT&T to bill the proper carrier for terminations on its switches.

Comprehensive Billing Issue 4a

Should SBC be required to provide to AT&T the OCN of 3rd party originating carriers when AT&T is terminating calls as an unbundled switch user of SBC?

Comprehensive Billing Issue 4b

Should SBC be billed on a default basis when it fails to provide the 3rd party originating carrier OCN to AT&T when AT&T is terminating calls as the unbundled switch user?

AT&T's Position

AT&T has proposed that where it is acting as a UNE-based provider, SBC should provide the OCN of the originating carrier to AT&T so AT&T can properly bill the originating carrier. SBC has proposed to provide the OCN for some of the traffic flowing to AT&T through its ULS Port OCN project, but at a later, unknown date. AT&T found SBC's proposal acceptable, so long as the ULS Port OCN project will be implemented in a timely manner, and proposed contract language to reflect this.

However, even with the implementation of the ULS Port OCN project, SBC asserted that it would still be unable to provide AT&T with the OCN for calls originated by CLECs that use their own switching facilities rather than SBC's. AT&T stated that it is unclear why SBC cannot provide AT&T with this information, considering that the calls originated by such carriers travel through SBC's switches to AT&T. SBC also proposed that AT&T access the OCN for these calls via SBC's LIDB. AT&T stated that for the same reasons set forth under Issue Comprehensive Billing 3, this is an unacceptable proposal.

Finally, as in Issue Comprehensive Billing 3, AT&T suggested that any records received from SBC without the originating OCN will be treated as though they were originated from SBC, in accordance with 9.2.7 of the ICA.

SBC's Position

Issue 4.a is not well framed, because SBC has agreed to provide AT&T the OCNs of third party originating carriers when AT&T terminates calls as a user of SBC-provided unbundled local switching. The only question is the limitations to which that obligation will be subject. The modest limitations in SBC's proposed language are reasonable and should be accepted. Those limitations are: (1) SBC will provide the OCNs only where "technically feasible," a limitation to which AT&T can articulate no objection; (2) SBC will start providing the OCNs after it has completed the project that is underway to enable it to do so – a limitation to which AT&T's witness objects but that also appears in the language that AT&T proposes for this issue; and (3) the OCNs will be provided only for calls that originate on the networks of carriers that that lease unbundled local switching from SBC – a patently reasonable limitation, because it is only for such carriers that SBC's switch will be recording the OCN.

AT&T's proposal to charge SBC "on a default basis" for calls for which SBC's usage reports do not include OCNs must be rejected. AT&T's proposed language cannot be included in the Agreement as a penalty, because penalty provisions in contracts are unlawful. Nor can it be included as a liquidated damages provision, because none of the conditions that the law requires for liquidated damages provisions pertains. Nor it there any theory under the 1996 Act that would somehow shift to SBC the originating carrier's duty to pay reciprocal compensation to AT&T; that duty remains with the originating carrier.

AT&T has given the Commission no reason to anticipate that SBC will breach any obligation to provide OCNs to AT&T, and there is no reason to include a special remedy provision in the Agreement to address the hypothetical situation where SBC does breach that obligation. The particular provision that AT&T has proposed is patently unlawful, and must be rejected. If SBC does ever breach an obligation to provide OCNs to AT&T under this Agreement, AT&T can resort to the breach of contract remedies allowed by law.

Commission Analysis and Conclusion

This issue is similar to Comprehensive Billing Issue No.3 in regards that it requires SBC to provide AT&T the OCN of third party originating carriers when AT&T is terminating calls. The difference between this issue and Issue No. 3 is that in this situation AT&T is terminating calls as an unbundled switch user of SBC. Both parties agree that it is necessary for AT&T to be able to obtain this information in order to bill. SBC admits that when the calls are originating on their SBC ULS Port, it is technically feasible for it to provide this information. Otherwise, SBC states that it would be difficult for it to obtain this information. SBC has further indicated that it is currently working on a ULS Port OCN project which is targeted for completion for first quarter of 2004. SBC has agreed to begin providing this information on a regular basis to AT&T once this project is up and running. The difference between SBC's and AT&T's language is that

AT&T wants to be able to bill SBC as the originating OCN if SBC fails to provide the information needed by AT&T.

The Commission concludes that SBC should be able to provide this information to AT&T in order for AT&T to properly bill the originating third party carriers. This information obviously will be available to SBC when the originating third party carrier utilized the SBC ULS Port. If SBC fails to provide the necessary information in the original request by AT&T, then AT&T must again request this information from SBC. If SBC fails to again provide the OCN to AT&T for properly billing purposes, then AT&T can assume that SBC is the originating carrier.

Therefore, issue 4a and 4b should be resolved as follows:

> Section 27.14.4- SBC will include the OCN of the originating carrier in the usage records it provides for calls originated by third party carriers utilizing an SBC ULS Port that terminates to an AT&T ULS Port when technically feasible. SBC Illinois will begin providing this OCN after SBC Illinois completes its ULS Port OCN project which project is targeted for completion during first quarter of 2004.
>
> Section 9.2.7.4.4- SBC will include the OCN of the originating carrier in the usage records it provides for calls originated by third party carriers utilizing an SBC ULS Port that terminates to an AT&T ULS Port, where technically feasible. If SBC fails to provide the OCN of the originating carriers in the usage records it provides for AT&T, AT&T will request again the OCN of the third party originating carrier. If SBC fails to provide the information of the originating OCN, then AT&T will treat it as though it was originated by SBC in accordance with the terms of Schedule 9.2.7 of this agreement.

I. OSS Issues

OSS Issue 2

Should AT&T be required to specify features or functionalities on UNE-P migration orders or should AT&T be able to indicate 'as is' on UNE-P migration orders through a standard indicator on the orders?

AT&T's Position

AT&T's proposed language which requires SBC to allow AT&T to submit "as-is" migration orders for end users switching from SBC retail to service from AT&T using UNE-P, and for end users switching from UNE-P-based service from another CLEC to UNE-P-based service from AT&T. AT&T stated that its proposed language benefits the end user. AT&T stated that its proposed language will improve the accuracy and efficiency of the ordering process and, most importantly, will prevent customer service disruptions, losses and/or changes in features, functionality and other customer-

impacting occurrences which may arise from the use of SBC's "as specified" ordering process. AT&T contended that SBC's proposal negatively impacts AT&T's prospective end users and AT&T's ability to compete effectively with SBC in the local service markets.

AT&T contended that SBC witness McNiel, in characterizing "as specified" ordering as being the existing practice for UNE-P migrations, omitted the fact that until October 2002 SBC provided for both "as is" and "as specified" orders. Further, Staff witness Dr. Staranczak addressed this issue as though "as is" ordering were something that SBC had never provided, rather than something that SBC provided until very recently. AT&T stated that to the extent SBC would incur costs to reinstate its "as is" ordering capability, those costs would be the direct result of SBC's decision in October 2002 to modify its OSS in a way that terminated the availability of "as is" ordering. Therefore, it would inappropriate to require AT&T and other CLECs to bear the costs for reinstating SBC's ability accommodate "as is" ordering. AT&T also noted that in its Section 271 investigation for SBC, Docket 01-0662, in which this issue was raised in Phase 2, the Commission viewed "as is" ordering as a new proposal, not as a form of ordering SBC offered until October 2002, and stated that the Section 271 docket was not the place to address new or novel issues relating to service obligations. AT&T stated that in contrast, this arbitration proceeding is intended to establish the specific rights and obligations of AT&T and SBC in their interconnection relationship. AT&T also pointed out that it had raised the need for "as is" migrations with SBC in the Change Management Process, but that SBC had rejected this request and stated that it would not be considered in the CMP.

SBC's Position

The question presented is whether SBC is required by section 13-801 of the Act to support "as is" ordering when a CLEC migrates a customer onto its service using the UNE platform. Illinois law clearly does not require "as is" ordering as AT&T requests. In Docket No. 01-0662 (SBC 271 Investigation) the Commission directly addressed this issue and ruled that section 13-801(d)(6) does not require the "as is" ordering that AT&T seeks. The issue was also addressed in Docket 01-0614, where the Commission approved SBC tariffs that define "as is" to simply mean that the CLEC may purchase a platform representing the unbundled network elements that make up the end users existing service without changing the service.

AT&T's position should be rejected for other reasons as well. First, the current "as specified" ordering process was developed in industry collaboratives initiated pursuant to both the Illinois Merger Order and the FCC Merger Order. In reliance on those industry processes, SBC devoted substantial time and effort to deploy the current ordering process. AT&T's request would require SBC to rework all of those procedures.

Second, AT&T has not demonstrated that whatever minor convenience it would gain from "as is" ordering sufficiently outweighs the expense and disruption to SBC and the CLEC industry. SBC would have to substantially redesign its OSS processes and

systems at great expense. These changes would lead to manual handling for a substantial period of time and would thus prevent "flow through" of CLEC orders.

Finally, CLECs should specify the particular UNEs and features they wish to order. This business practice ensures that both CLECs and SBC know and understand exactly what has been ordered, thus avoiding disputes about whether the proper features are activated and whether SBC is billing for the right services.

Staff's Position

Staff opines that if AT&T wishes "as is" ordering it should bear the cost of altering SBC's OSS systems to accommodate "as is" ordering, and language to this effect should be included in AT&T's proposed language for Section 5.14. If AT&T is unwilling to bear the OSS modification costs, then SBC's wording for Section 5.14 is acceptable to Staff.

Commission Analysis and Conclusion

It is undisputed that SBC offered "as is" conversions for UNE-P until October 2002. At that time SBC discontinued the EDI ordering interface known as Version 7, and it does not now support "as is" ordering for UNE-P migrations in its current LSOG versions.

AT&T raised important issues concerning its inability to order UNE-P as is. For instance, a CLEC could be accused of cramming if it accidentally order too many services for the end user. Further, in attempting to order each component that the end-user had, the CLEC could make errors on the order format. Some errors on orders can cause an order to not flow through, but would rather fall out of the system for manual processing. This causes delays for end-users and effects AT&T's ability to compete.

AT&T also argues that the Act supports its position. The relevant language of Section 13-801 states:

> A requesting telecommunications carrier may order the network elements platform as is for an end user that has such existing local exchange service without changing any of the features previously selected by the end user. The incumbent local exchange carrier shall provide the requested network elements platform without any disruption to the end user's services. 220 ILCS 5/13-801(d)(6).

This section, in whole, addresses the provisioning stage of CLEC orders for UNE-P. This paragraph refers to the provisioning of the network elements platform, not ordering. It requires SBC to offer "as is" provisioning. This specific issue, however, deals with the ordering stage. When Section 13-801(d)(4) is read in conjunction with Section 13-801(d)(6), it is apparent that the legislature intended for UNE-P migrations to proceed smoothly. Section (d)(4) requires the ILEC to provision that service, when no field work

is required, within 3 days 95% of the time. A CLEC "may order the network elements platform as is" without changing any of the features selected. Section 13-801(d)(6) of the statute further provides that SBC will provision this without any disruption in the end-user's service. In other words, without being specifically required by the statute, but in order give meaning to the overall intent of the legislature, when AT&T wins a customer that is currently being provided service over SBC's network, AT&T may take an order from that customer that says "give me the same services I'm currently getting." AT&T may then place an order with SBC that says "switch this customer to us, with the same services they're currently getting."

We conclude that in order to give meaning to "without any disruption to the end user's services", SBC must offer "as is" ordering. The possibility for errors in ordering each individual service could lead to disruptions in the end user's services. Although not specifically required by the statute, the "as is" language taken in conjunction with the fact that this functionality was previously offered by SBC, leads us to conclude that SBC must offer "as is" conversions for UNE-P. This conclusion will further promote competition in Illinois.

Both AT&T and SBC argue about the Commission's intent in the Section 271 proceeding regarding this issue. It is clear that the Commission found that the Section 271 proceeding was not the proper place for a decision on "as is" migrations and, thus, made no finding either way. Arguably, this docket is not either because it is an issue that has the potential to affect the entire CLEC community. Nevertheless, the conclusion we reach allows other CLECs the benefit of "as is" ordering if they are willing to share in the cost of implementation. Accordingly, we find that SBC should offer "as is" ordering if AT&T is willing to pay. If other CLECs choose to use this functionality, they will be responsible for their share of the implementation costs, as suggested by Staff.

Article 33, Section 5.14 of the ICA, therefore, shall read as follows:

> SBC-Ameritech will utilize industry guidelines to develop and implement ordering requirements to allow AT&T to send an LSR utilizing LSOG 5 (and future LSOG releases) for Unbundled Network Element Platform conversions without specifying the features or functionalities that were previously being provided by SBC-Ameritech or any CLEC using SBC-Ameritech resale or UNE-P services (i.e. a UNE-P "as-is" LSR utilizing an ACT of "W"). AT&T will compensate SBC for its share of OSS implementation costs necessary to accommodate "as is" ordering for UNE-P.

J. Pricing Issues

Pricing Issue 1

Should AT&T's rates for SBC's use of Space License apply on a per trunk group or per switch basis?

AT&T's Position

AT&T proposed to assess SBC charges for Space License on a per-DS1 or equivalent, per-trunk group basis at each AT&T network location at which SBC leases space for the purpose of terminating its trunks. This is the basis on which AT&T charges SBC for Space License at AT&T network locations in all four other SBC-Midwest states, and is the same method that AT&T uses for its tariff for Space License. SBC, in contrast, proposed that the charges be assessed on the basis on the cumulative total of all SBC DS1 or equivalents at an AT&T network location. AT&T stated that SBC's position should be rejected, thereby maintaining a consistent approach for charging for Space License between the parties in all five SBC Midwest states.

AT&T disputed SBC's assertion that if the discounts are applied on a per-trunk group basis, rather than on the basis of the total number of DS1s terminated at a location, SBC will be unable to achieve the maximum discount. AT&T showed that for every DS3 in a trunk group terminated (a DS3 is equivalent to 28 DS1's), a progressive level of reduced rate would be applied such that SBC would need only terminate seven DS3's to take advantage of the lowest price available in the ICA Pricing Schedule.

AT&T also stated that SBC's lengthy efforts to attempt to show that the amount of space leased by SBC, and AT&T's costs to provide the space, are a function of the total number of terminations, not of the number of trunk groups terminated, ignored a crucial point: AT&T is offering discounts from the maximum rates based on the number of trunk groups terminated at each of its network locations, not on the basis of the total number of DS1's terminated at each location. AT&T stated that even assuming that SBC's claim that the amount of space it uses, and AT&T's costs, are a function of the total number of DS1's terminated at a network location, this would not justify simply taking the discounts that AT&T is offering per trunk group and applying those same discounts to the total number of DS1's terminated. Rather, different discounts would have to be determined. AT&T stated that simply applying the discounts applicable on a per-trunk group basis to the number of DS1's per location would be arbitrary and incorrect.

SBC's Position

The Commission should reject AT&T's proposal to artificially limit SBC's ability to take advantage of the volume discounts for space license. AT&T proposes to apply the discount schedule only to those DS1s within the same trunk group. This limitation

makes no sense as a practical matter because there is no relationship between the costs which AT&T incurs to provide space on the one hand, and the number of trunk groups that SBC has, on the other hand. There is a relationship between AT&T's cost and the number of DS1s SBC has, and the Pricing Schedule appropriately reflects that relationship by causing SBC to pay on a per DS1 basis. The more DS1s SBC terminates to AT&T, the more SBC pays.

Under AT&T's proposal, SBC can never (or only rarely), enjoy any benefit of the promised volume discounts. SBC demonstrates that even in an AT&T office where hundreds and hundreds of SBC DS1s are terminated, it is charged less than the highest rate for only 14 of those DS1s. In short, AT&T's proposal allows it to give with one hand, and take away with the other.

Finally, AT&T offers no justification for the sharp rate increase this would cause. While AT&T attempts to justify its position by referencing a "former" access tariff, that tariff contradicts AT&T's own position because it the tariff does not apply volume discounts on a "per trunk group" basis. Rather, by its plain meaning it applies the volume discount on a single per DS1 basis as SBC proposes in this case.

Staff's Position

AT&T's position should be adopted, since it appears to be based on AT&T's practice in its tariffs.

Commission Analysis and Conclusion

This issue deals with whether AT&T's rate for SBC's use of Space License apply on a per-trunk group or per-switch basis. AT&T proposes to offer a discount schedule only to DS1s within the same trunk group. SBC asserts that it should be entitled to a discount for the use of any DS1s that terminate to an AT&T central office.

AT&T raises four arguments in support of their position:. (1) In their agreement with the four other SBC Midwest states the per-trunk group pricing is used; (2) AT&T used to bill on a per-trunk group basis in a former access tariff; (3) SBC can take advantage of volume discounts by using multiple DS3s in a trunk group; and (4) AT&T states that if they are not allowed to bill on a per-trunk basis that it will be necessary for them to recalculate the rates on a per-DS1 rate basis.

SBC has responded to each and every one of the points argued by AT&T. First and foremost it argues that it simply missed the addition of per-trunk group into the price schedule in the other Midwest state negotiations. Secondly, it claims that there is no such limitation in the AT&T tariff and wonders why AT&T continues to use the tariff in support of its position. Next, SBC argues that it would take a total of 196 DS1s in order for it to obtain the maximum discount. Finally, it argues that if this discount only applies to a per-trunk group basis there would be no need to create a price schedule with DS1

volumes up to a thousand since there would never be any large DS1 volumes to justify the discount.

Staff contends that AT&T is correct in this position and should be entitled to charge on a per-trunk group basis and not on a DS1 basis.

AT&T has not shown that it costs more and that it uses more space to justify the per-trunk basis over the per-switch basis proposed by SBC. The fact that this is the way that AT&T charges in four other Midwestern regions is not convincing to the Commission. We also do not agree that the tariff that was cited by AT&T supports its position in charging per-trunk rather than on a per-switch basis. Therefore, we agree with SBC and find that the use of space licenses apply on a per-switch basis and not a per-switch group basis.

Pricing Issue 4

What is the proper rate for reciprocal compensation associated with ULS-ST?

See our discussion of this issue under Intercarrier Compensation Issue 1.

Pricing Issue 5a

How should LIDB queries be defined in the Pricing Schedule?

Pricing Issue 5b

Should prices for unbundled operator services - LIDB validations be included in the Pricing Schedule?

AT&T's Position

AT&T stated that the prices charged by SBC for AT&T's LIDB queries should be the tariff rates set in SBC's tariff Ill. C.C. No. 20, Part 19, Section 11, 1st Revised Sheet No. 5, issued April 3, 1998, pursuant to the Commission's Second Interim Order issued February 17, 1998, in Dockets 96-0486/96-0569 Consolidated. SBC proposed a different pricing arrangement for the ICA which would eliminate rate elements and thus would change both the structure and the pricing for this functionality. AT&T contended that if SBC wants to change a tariffed rate, it should file proposed tariff changes with the Commission, along with appropriate cost support, for ultimate approval by the Commission. Only at that point should the resulting pricing and rate design changes be incorporated into the Pricing Schedule of the ICA. AT&T stated that SBC's arguments that its currently-effective tariff is "obsolete" and does not accurately reflect the services SBC is offering is irrelevant. AT&T noted that Staff witness Hanson agreed with AT&T's position and stated that the most appropriate action is to adopt AT&T's position.

In its reply testimony to Staff, SBC urged the Commission to adopt language that would require the Price Schedule to automatically change if the rate or rate structure for

the SBC LIDB offering changed. AT&T stated that this would be unacceptable, and could potentially cause confusion in the case of other changes to tariffed SBC prices, as it would call into question whether a separate statement is needed in the ICA to expressly authorize the incorporation of revised tariffed prices into the ICA Pricing Schedule. AT&T maintained that its proposed language for this issue should be adopted.

SBC's Position

There is no dispute that SBC will provide access to its LIDB and that rates for such access will be included in the Agreement. The sole issue is whether the LIDB rates should be those reflected in SBC's current LIDB tariff or whether the Agreement should reflect the updated rates and rate structure contained in a LIDB tariff filed June 6, 2003. The changes proposed by SBC in its LIDB tariff filing will reduce LIDB rates, eliminate other LIDB charges and streamline the offering to focus only on access to SBC's LIDB information – not LIDB information of third-parties over which SBC has no control. These changes should be reflected in the Agreement regardless of the outcome of the tariff proceeding.

Staff's Position

SBC has filed to amend the charges at issue, therefore, Staff recommends that the interconnection agreement should incorporate whatever rates are ultimately approved by the Commission for these services.

Commission Analysis and Conclusion

This issue deals with what rates SBC will charge to provide access to its LIDB. The issue is whether or not the LIDB rates should be reflected at SBC's current LIDB tariff or whether the agreement should reflect the updated rates and rate structures contained in the LIDB tariff filed by SBC on June 6, 2003.

SBC argues that the new rates should be incorporated into this ICA. They maintain that the rates in the new tariff filing are reduced; it will eliminate other LIDB charges and streamline the offering to focus only on SBC's LIDB information and not that of third party carriers, which SBC has no control over.

AT&T argues that the new rates as filed by SBC for its LIDB tariff should not be incorporated into this agreement. It argues that these new rates have not been approved by the Commission and that there is no proof that the resulting prices and rates are cheaper than what is currently being charged in the current LIDB tariff. AT&T feels that for new rates to be incorporated into this agreement they need to be approved by the Commission.

Staff agrees with AT&T that no new tariff rates should be incorporated into this agreement without the approval of the Commission. Staff, however, recommends that

additional language be added to incorporate the new rate structure if and when the LIDB tariff is approved by this Commission. It should be noted for the record that both SBC and AT&T do not agree with adding this additional language to this issue.

Since SBC has filed a new LIDB tariff, we find that the new rates should not be incorporated in this ICA. If and when the new rates are approved by the Commission, then those new rates can be incorporated into this agreement pursuant to Article 5 of the General Terms and Conditions. Therefore, we agree with AT&T's proposal and implement the current tariff rates as set forth in SBC's tariff Ill.C.C.No.20, Part 19, Section 11 First Revised Sheet No. 5 Issued April 3, 1998, Pursuant to the Commission's Second Interim Order Issued February 17, 1998, in Docket 96-0486/960569 Consolidated.

IV. ARBITRATION STANDARDS

Under subsection 252(c) of TA96, the Commission is required to resolve open issues, and impose conditions upon the parties, in a manner that comports with three standards. The Commission holds that the analysis in this arbitration decision satisfies that requirement.

First, subsection 252(c)(1) directs the state commissions to "ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251." In this arbitration, the Commission has directed the parties to include provisions in their interconnection agreement that fully comport with Section 251 requirements and FCC regulations.

Second, subsection 252(c)(2) requires that we "establish any rates for interconnection, services or network elements according to subsection [252(d)]." Here, most of the pertinent rates were already established by the parties through mutual agreement. Insofar as the Commission's resolution of open issues will affect those or other rates in the parties' interconnection agreement, we require, and expect the parties to establish, rates that are in accord with subsection 252(d) of TA96.

Third, pursuant to subsection 252(c)(3), the Commission must "provide a schedule for implementation of the terms and conditions by the parties to the agreement." Therefore, the Commission directs that the parties file, within 15 calendar days of the date of service of this arbitration decision, their complete interconnection agreement for Commission approval pursuant to subsection 252(e) of TA96.

DATED: July 25, 2003
BRIEFS ON EXCEPTIONS DUE: August 5, 2003 (By Noon)
REPLY BRIEFS ON EXCEPTIONS DUE: August 14, 2003

Leslie Haynes,
Glennon Dolan,
Administrative Law Judges